

Title 40. Mines and Mining

Chapter 1 Mining Claims

40-1-1 Lode claims -- Size and shape -- Discovery necessary.

A lode mining claim, whether located by one or more persons, may equal, but shall not exceed, 1,500 feet in length along the vein or lode and may extend 300 feet on each side of the middle of the vein at the surface, except where adverse rights render a lesser width necessary. The end lines of each claim must be parallel. No location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located.

No Change Since 1953

40-1-2 Discovery monument -- Notice of location -- Contents.

The locator at the time of making the discovery of such vein or lode must erect a monument at the place of discovery, and post thereon his notice of location which shall contain:

- (1) The name of the claim.
- (2) The name of the locator or locators.
- (3) The date of the location.
- (4) If a lode claim, the number of linear feet claimed in length along the course of the vein each way from the point of discovery, with the width claimed on each side of the center of the vein, and the general course of the vein or lode as near as may be, and such a description of the claim, located by reference to some natural object or permanent monument, as will identify the claim.
- (5) If a placer or mill site claim, the number of acres or superficial feet claimed, and such a description of the claim or mill site, located by reference to some natural object or permanent monument, as will identify the claim or mill site.

No Change Since 1953

40-1-3 Boundaries to be marked.

Mining claims and mill sites must be distinctly marked on the ground so that the boundaries thereof can be readily traced.

No Change Since 1953

40-1-4 Copy of location notice to be recorded.

Within 30 days after the date of posting the location notice upon the claim, the locator, or the locator's assigns, shall record a substantial copy of the notice of location in the office of the county recorder of the county in which the claim is situated.

Amended by Chapter 85, 1999 General Session

40-1-6 Affidavit of performance of annual labor or payment of maintenance fee.

- (1) As used in this section, "assessment work" means the performance of labor or making of improvements on or for the benefit of a mining claim.

- (2) Within 30 days after the end of the annual period specified in 30 U.S.C. Sec. 28 the owner of an unpatented lode or placer mining claim, or a mill or tunnel site claim or someone on his behalf, shall record an affidavit in the office of the county recorder of the county in which the claim is located setting forth:
 - (a) the name and address of the owner of the claim;
 - (b) the name of the claim and the serial number, if any, assigned to the claim by the United States Bureau of Land Management;
 - (c) if assessment work was required to be performed under 30 U.S.C. Sec. 28 or other federal law to maintain the claim, a statement that the annual assessment work required to maintain the claim was performed; and
 - (d) if the assessment work was not required to be performed under 30 U.S.C. Sec. 28 or other federal law, a statement that it is the intention of the owner to hold the claim, and if a claim maintenance fee was paid as required by the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66 or other federal law, a statement that the fee was paid in a timely manner.
- (3) The affidavit, or a certified copy, shall be prima facie evidence of the facts stated in the affidavit.
- (4) The amendments made in this section do not affect any act or right accruing or which has accrued or been established or any suit or proceeding commenced before May 1, 1995.

Amended by Chapter 85, 1999 General Session

40-1-7 District recorders -- Office abolished.

From and after the termination of the office of any mining district recorder now holding office in this state such district shall be abolished and such office shall become vacant.

No Change Since 1953

40-1-8 Vacancy and removal -- County recorder to receive records.

- (1) If there is a vacancy in the office of recorder of any mining district, or if there is no person in the mining district authorized to retain the custody and give certified copies of the records, the person having custody of the records shall deposit them in the office of the county recorder of the county in which the mining district, or the greater part of the mining district, is situated.
- (2) That county recorder shall take possession of the records and may make and certify copies from the records, including any other copies of records and papers in the recorder's office pertaining to mining claims.
- (3) Those certified copies shall be receivable in evidence in all courts and before all officers and tribunals.
- (4) The production of a certified copy shall be, without further proof, evidence that the records were properly in the custody of the county recorder.

Amended by Chapter 85, 1999 General Session

40-1-9 County recorder may certify district records.

- (1) When the books, records, and documents pertaining to the office of mining district recorder have been deposited in the office of a county recorder, the recorder may make and certify copies from those records.
- (2) Those certified copies shall be receivable in all tribunals and before all officers of this state in the same manner and to the same effect as if the records had been originally filed or made in the office of the county recorder.

Amended by Chapter 85, 1999 General Session

40-1-10 Certified copies of records evidence.

Copies of notices of location of mining claims, mill sites and tunnel sites heretofore recorded in the records of the several mining districts, and copies of the mining rules and regulations in force therein and recorded, when duly certified by the district or county recorder, shall be receivable in all tribunals and before all officers of this state as prima facie evidence.

No Change Since 1953

40-1-11 Interfering with notices, stakes, or monuments -- Penalty.

Any person who intentionally or knowingly tears down or defaces a notice posted on a mining claim, or takes up or destroys any stake or monument marking the claim, or interferes with any person lawfully in possession of the claim, or who alters, erases, defaces, or destroys any record kept by a mining district or county recorder, is guilty of a class B misdemeanor, and shall be punished by a fine of not less than \$25 nor more than \$100, or by imprisonment for not less than 10 days nor more than six months, or by both the fine and imprisonment.

Amended by Chapter 229, 2007 General Session

40-1-12 Damages for wrongful removal of ores.

When damages are claimed for the extraction or selling of ore from any mine or mining claim and the defendant, or those under whom he claims, holds, under color of title adverse to the claims of the plaintiff, in good faith, then the reasonable value of all labor bestowed or expenses incurred in necessary developing, mining, transporting, concentrating, selling or preparing said ore, or its mineral content, for market, must be allowed as an offset against such damages; provided, however, that any person who, wrongfully entering upon any mine or mining claim and carrying away ores therefrom, or wrongfully extracting and selling ores from any mine, having knowledge of the existence of adverse claimants in any mine or mining claim, and without notice to them, knowingly and willfully trespasses in or upon such mine or mining claim and extracts or sells ore therefrom shall be liable to the owners of such ore for three times the value thereof without any deductions either for labor bestowed or expenses incurred in removing, transporting, selling or preparing said ore, or its mineral content for market.

No Change Since 1953

**Chapter 2
Coal Mine Safety Act**

**Part 1
General Provisions**

40-2-101 Title.

This chapter is known as the "Coal Mine Safety Act."

Enacted by Chapter 113, 2008 General Session

40-2-102 Definitions.

As used in this chapter:

- (1) "Adverse action" means to take any of the following actions against a person in a manner that affects the person's employment or contractual relationships:
 - (a) discharge the person;
 - (b) threaten the person;
 - (c) coerce the person;
 - (d) intimidate the person; or
 - (e) discriminate against the person, including to discriminate in:
 - (i) compensation;
 - (ii) terms;
 - (iii) conditions;
 - (iv) location;
 - (v) rights;
 - (vi) immunities;
 - (vii) promotions; or
 - (viii) privileges.
- (2) "Coal mine" means:
 - (a) the following used in extracting coal from its natural deposits in the earth by any means or method:
 - (i) the land;
 - (ii) a structure;
 - (iii) a facility;
 - (iv) machinery;
 - (v) a tool;
 - (vi) equipment;
 - (vii) a shaft;
 - (viii) a slope;
 - (ix) a tunnel;
 - (x) an excavation; and
 - (xi) other property; and
 - (b) the work of preparing extracted coal, including a coal preparation facility.
- (3) "Commission" means the Labor Commission created in Section 34A-1-103.
- (4) "Commissioner" means the commissioner appointed under Section 34A-1-201.
- (5) "Council" means the Mine Safety Technical Advisory Council created in Section 40-2-203.
- (6) "Director" means the director of the Utah Office of Coal Mine Safety appointed under Section 40-2-202.
- (7) "Major coal mine accident" means any of the following at a coal mine located in Utah:
 - (a) a mine explosion;
 - (b) a mine fire;
 - (c) the flooding of a mine;
 - (d) a mine collapse; or
 - (e) the accidental death of an individual at a mine.
- (8) "Mine Safety and Health Administration" means the federal Mine Safety and Health Administration within the United States Department of Labor.
- (9) "Office" means the Utah Office of Coal Mine Safety created in Section 40-2-201.

(10) "Panel" means the Coal Miner Certification Panel created in Section 40-2-204.

(11) "Unsafe condition" means a danger that reasonably could be expected to cause serious harm to a person or property.

Enacted by Chapter 113, 2008 General Session

40-2-103 Scope and administration of chapter.

(1) This chapter applies to any coal mine located in the state.

(2) The commission:

(a) shall administer this chapter with the assistance of the office; and

(b) has jurisdiction over a coal mine in this state as set forth in this chapter.

Enacted by Chapter 113, 2008 General Session

40-2-104 Rulemaking authority.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules necessary to implement this chapter.

Renumbered and Amended by Chapter 113, 2008 General Session

Amended by Chapter 382, 2008 General Session

Part 2

Utah Office of Coal Mine Safety

40-2-201 Utah Office of Coal Mine Safety created.

(1) There is created within the commission the "Utah Office of Coal Mine Safety."

(2) The office, under the direction of the commissioner, shall assist the commission in administering this chapter.

Enacted by Chapter 113, 2008 General Session

40-2-202 Appointment of director.

(1) The director is the chief officer of the office and serves as the executive and administrative head of the office.

(2)

(a) The commissioner shall appoint the director.

(b) The director may be removed from that position at the will of the commissioner.

(3) The director shall receive compensation as provided by Title 67, Chapter 19, Utah State Personnel Management Act.

(4) The director shall be experienced in administration and possess such additional qualifications as determined by the commissioner.

Enacted by Chapter 113, 2008 General Session

40-2-203 Mine Safety Technical Advisory Council created -- Duties.

- (1) Within the office there is created the "Mine Safety Technical Advisory Council" consisting of 13 voting members and five nonvoting members as provided in this section.
- (2)
 - (a) The commissioner shall appoint the voting members of the council as follows:
 - (i) one individual who represents a coal miner union;
 - (ii) two individuals with coal mining experience;
 - (iii) two individuals who represent coal mine operators;
 - (iv) one individual who represents an industry trade association;
 - (v) two individuals from local law enforcement agencies or emergency medical service providers;
 - (vi) three individuals who have expertise in one or more of the following:
 - (A) seismology;
 - (B) mining engineering;
 - (C) mine safety; or
 - (D) another related subject; and
 - (vii) two individuals from entities that provide mine safety training.
 - (b) The nonvoting members of the council are:
 - (i) the commissioner or the commissioner's designee;
 - (ii) the executive director of the Department of Natural Resources or the executive director's designee;
 - (iii) the commissioner of the Department of Public Safety or the commissioner's designee;
 - (iv) a representative of the Mine Safety and Health Administration selected by the Mine Safety and Health Administration; and
 - (v) a representative of the federal Bureau of Land Management selected by the federal Bureau of Land Management.
- (3)
 - (a) Except as required by Subsection (3)(b), a voting member shall serve a four-year term beginning July 1 and ending June 30.
 - (b) Notwithstanding the requirements of Subsection (3)(a), the commission shall, at the time of appointment of the initial voting members of the council, adjust the length of terms of the voting members to ensure that the terms of voting members are staggered so that approximately half of the voting members are appointed every two years.
- (4)
 - (a) The commissioner shall terminate the term of a voting member who ceases to be representative as designated by the voting member's original appointment.
 - (b) If a vacancy occurs in the voting members, the commissioner shall appoint a replacement for the unexpired term after soliciting recommendations from the council members.
- (5)
 - (a) The council shall meet at least quarterly.
 - (b) A majority of the voting members constitutes a quorum.
 - (c) A vote of the majority of the members of the council when a quorum is present constitutes an action of the council.
- (6)
 - (a) The commissioner or the commissioner's designee is the chair of the council.
 - (b) The commission shall staff the council.
- (7) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;

- (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (8) The council shall advise and make recommendations to the commission, the office, and the Legislature regarding:
- (a) safety of coal mines located in Utah;
 - (b) prevention of coal mine accidents;
 - (c) effective coal mine emergency response;
 - (d) coal miner certification and recertification; and
 - (e) other topics reasonably related to safety of coal mines located in Utah.

Amended by Chapter 286, 2010 General Session

40-2-204 Coal Miner Certification Panel created -- Duties.

- (1) There is created within the office the "Coal Miner Certification Panel."
- (2) The panel consists of:
 - (a) the commissioner or the commissioner's designee; and
 - (b) at least eight other members appointed by the commissioner with equal representation and participation from:
 - (i) management of coal mine operations; and
 - (ii) hourly coal mining employees.
- (3) A member appointed by the commissioner shall:
 - (a) have at least five years' experience in coal mining in this state;
 - (b) administer the certification test to an applicant referred to in Section 40-2-402;
 - (c) consult with the commission about applicant qualifications specified in Section 40-2-402;
 - (d) meet when directed by the commissioner or the commissioner's designee; and
 - (e) hold office at the pleasure of the commissioner.
- (4) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 286, 2010 General Session

40-2-205 Utah Research Institute for Mine Safety and Productivity -- Designation -- Duties.

- (1) As used in this section, "institute" means the University of Utah Center for Mining Safety and Health Excellence, designated as the Utah Research Institute for Mine Safety and Productivity in Subsection (2).
- (2) The University of Utah Center for Mining Safety and Health Excellence is designated as the Utah Research Institute for Mine Safety and Productivity.
- (3) In coordination with the council, the institute may:
 - (a) organize symposia, presentations, or other academic meetings; and
 - (b) identify and propose research projects on topics related to mining safety and productivity.

Enacted by Chapter 27, 2015 General Session

Part 3

Safety Conditions

40-2-301 Commission and office responsibilities.

- (1) The commissioner shall:
 - (a) direct the state's efforts to promote coal mine safety; and
 - (b) participate with the Mine Safety and Health Administration in an investigation of a major coal mine accident in Utah.
- (2) The commission shall establish by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
 - (a) a system consistent with Section 40-2-302 to receive, evaluate, and act on a report of an alleged unsafe condition at a coal mine; and
 - (b) requirements for a coal mine operator regarding notification of a coal mine accident as part of a coal mine operator's emergency response plan.
- (3) The office may:
 - (a) conduct one or more studies to promote coal mine safety;
 - (b) cooperate with educational and other organizations to promote mining engineering and mine safety training;
 - (c) establish a cooperative relationship with the Mine Safety and Health Administration to promote coal mine safety in Utah;
 - (d) serve as the lead state agency in developing and implementing state and local response and communication plans for major coal mine accidents in Utah; and
 - (e) implement the notification requirements established under Subsection (2)(b).

Enacted by Chapter 113, 2008 General Session

40-2-302 Reporting of an unsafe condition in coal mines -- Adverse action prohibited.

- (1) Subject to the other provisions of this section, upon the office's receipt of information from a person of a possible unsafe condition in a coal mine located in Utah, the office may:
 - (a) notify the federal Mine Safety and Health Administration;
 - (b) notify another appropriate federal, state, or local government agency;
 - (c) contact the operator of the coal mine;
 - (d) refer the information to the council on a confidential basis; or
 - (e) take any other authorized action.
- (2) The commission, council, or office may not disclose or otherwise make public the identity of a person who reports a possible unsafe condition in a coal mine located in Utah unless that person authorizes the commission, council, or office to disclose the person's identity.
- (3) A coal mine operator may not take adverse action against a person because that person:
 - (a) reports an alleged unsafe mine condition; or
 - (b) testifies, assists, or participates in any manner in an investigation, proceeding, or hearing under this chapter.

Enacted by Chapter 113, 2008 General Session

40-2-303 Annual report on coal mine safety.

- (1) By October 1 of each year, the commission, office, and council shall compile and submit to the governor and the Legislature a comprehensive report of the status of coal mine safety within the state for the immediately preceding calendar year.
- (2) The report required by this section shall include:
 - (a) a compilation of major coal mine accidents or other coal mine emergencies within the state during the calendar year;
 - (b) a statement of actions by the commission, office, or council to implement this chapter;
 - (c) without a breach in confidentiality, a summary of reports of alleged unsafe conditions received by the office, with a statement of the office's responses;
 - (d) recommendations for additional action to promote coal mine safety; and
 - (e) any other items the commission, office, and council consider appropriate.

Enacted by Chapter 113, 2008 General Session

Part 4

Certification of Coal Miners

40-2-401 Necessity of certificate.

- (1) A person may not work in an occupation referred to in Section 40-2-402 unless granted a certificate by the commission.
- (2)
 - (a)
 - (i) The commission may grant a temporary coal mine foreman certificate or a temporary coal mine surface foreman certificate to an applicant who is:
 - (A) recommended by a coal mine; and
 - (B) interviewed and found competent by two panel members.
 - (ii) A certificate granted under Subsection (2)(a)(i) remains in effect until:
 - (A) the next scheduled certification test;
 - (B) the person is retested; or
 - (C) the commission terminates the certificate.
 - (b)
 - (i) The commission may grant a surface foreman certificate to a current holder of an underground mine foreman certificate, if the applicant has three years of varied surface mining experience.
 - (ii) A surface foreman certificate applicant may receive credit for surface experience in any other industry that has substantially equivalent surface facilities, if the applicant has performed or is presently performing the duties normally required of a surface foreman.
- (3)
 - (a) The commission shall collect a fee described in Subsection (3)(b) for each temporary certificate.
 - (b) The commission shall establish the fee by following Section 63J-1-504.
- (4)
 - (a) An owner, operator, contractor, lessee, or agent may not employ a worker in any occupation referred to in Section 40-2-402 who is uncertified.
 - (b) The certificate shall be on file and available for inspection to interested persons in the office of the coal mine.

- (5) The commission shall grant a certificate to an applicant referred to in Section 40-2-402 who:
 - (a) passes the certification test administered by the panel; and
 - (b) meets the qualifications specified in Section 40-2-402.
- (6)
 - (a) The commission may grant a certificate to an applicant involved in gilsonite or other hydrocarbon mining as provided by rule.
 - (b) The commission shall enact rules governing the certification procedure, test, and qualifications for applicants involved in gilsonite or other hydrocarbon mining.
- (7) The commission may by rule require certification and recertification of other coal mine occupations, including the certification of a new coal miner.

Amended by Chapter 183, 2009 General Session

40-2-402 Certification requirements.

- (1) The commission shall collect a fee for:
 - (a) the taking of a certification test; or
 - (b) the retaking of one or more sections of a certification test.
- (2)
 - (a) The commission shall establish fees by following Section 63J-1-504.
 - (b) Notwithstanding Section 63J-1-504, the commission:
 - (i) shall retain the fees as dedicated credits; and
 - (ii) may only use the fees to administer the certification test.
- (3) An applicant who fails any section of the certification test may retake that section of the test.
- (4)
 - (a) An applicant who wishes to obtain a mine foreman certificate shall have at least four years varied underground coal mining experience, of which:
 - (i) two years' experience may be credited to a mining engineering graduate of an accredited four-year college; or
 - (ii) one year's experience may be credited to a graduate of a two-year course in mining technology.
 - (b)
 - (i) An applicant who wishes to obtain a surface foreman certificate shall have at least three years of varied surface experience.
 - (ii) The commission may grant a surface foreman certificate applicant credit for surface experience in any other industry that has substantially equivalent surface facilities.
 - (c) An applicant who wishes to obtain a fire boss certificate shall have at least two years of underground coal mining experience, of which:
 - (i) one year's experience may be credited to a mining engineering graduate of an accredited four-year college; or
 - (ii) six months' experience may be credited to a graduate of a two-year course in mining technology.
 - (d) An applicant who wishes to obtain an underground mine electrician certificate shall have at least one year of varied electrical experience as specified in 30 C.F.R. Sec. 75.153.
 - (e) An applicant who wishes to obtain a surface mine electrician certificate shall have at least one year of varied surface electrical experience as specified in 30 C.F.R. Sec. 77.103.
- (5) A certificate granted under Section 40-2-401 and this section shall expire if the certificate holder ceases to work in the mining industry or a mine related industry for more than five consecutive years.

Amended by Chapter 183, 2009 General Session

Chapter 5

Miscellaneous Safety Provisions

40-5-6 Mine rescue team required -- Immunity of rescue participants.

- (1) Each mine owner shall maintain and support a mine rescue team at such owner's mine or otherwise ensure the availability of a mine rescue team in the event of an emergency, in accordance with the requirements of the Federal Mine Safety and Health Act of 1977, and the regulations promulgated under it.
- (2) An individual, mine owner, or sponsoring owner who participates in a mine rescue operation during an emergency at the owner or sponsor's mine and who in good faith provides emergency care or assistance to an injured person during the emergency, is not liable in damages to such injured person on account of rendering emergency care or assistance.

Enacted by Chapter 181, 1983 General Session

Chapter 6

Board and Division of Oil, Gas, and Mining

40-6-1 Declaration of public interest.

It is declared to be in the public interest to foster, encourage, and promote the development, production, and utilization of natural resources of oil and gas in the state of Utah in such a manner as will prevent waste; to authorize and to provide for the operation and development of oil and gas properties in such a manner that a greater ultimate recovery of oil and gas may be obtained and that the correlative rights of all owners may be fully protected; to provide exclusive state authority over oil and gas exploration and development as regulated under the provisions of this chapter; to encourage, authorize, and provide for voluntary agreements for cycling, recycling, pressure maintenance, and secondary recovery operations in order that the greatest possible economic recovery of oil and gas may be obtained within the state to the end that the land owners, the royalty owners, the producers, and the general public may realize and enjoy the greatest possible good from these vital natural resources.

Enacted by Chapter 205, 1983 General Session

40-6-2 Definitions.

For the purpose of this chapter:

- (1) "Board" means the Board of Oil, Gas, and Mining.
- (2) "Correlative rights" means the opportunity of each owner in a pool to produce his just and equitable share of the oil and gas in the pool without waste.
- (3) "Condensate" means hydrocarbons, regardless of gravity, that:
 - (a) occur naturally in the gaseous phase in the reservoir; and

- (b) are separated from the natural gas as liquids through the process of condensation either in the reservoir, in the wellbore, or at the surface in field separators.
- (4) "Consenting owner" means an owner who consents in advance to the drilling and operation of a well and agrees to bear his proportionate share of the costs of the drilling and operation of the well.
- (5) "Crude oil" means hydrocarbons, regardless of gravity, that:
 - (a) occur naturally in the liquid phase in the reservoir; and
 - (b) are produced and recovered at the wellhead in liquid form.
- (6)
 - (a) "Gas" means natural gas, as defined in Subsection (9), natural gas liquids, as defined in Subsection (10), other gas, as defined in Subsection (16), or any mixture of them.
 - (b) "Gas" does not include any gaseous or liquid substance processed from coal, oil shale, or tar sands.
- (7) "Illegal oil" or "illegal gas" means oil or gas that has been produced from any well within the state in violation of this chapter or any rule or order of the board.
- (8) "Illegal product" means any product derived in whole or in part from illegal oil or illegal gas.
- (9)
 - (a) "Natural gas" means hydrocarbons that occur naturally in the gaseous phase in the reservoir and are produced and recovered at the wellhead in gaseous form, except natural gas liquids as defined in Subsection (10) and condensate as defined in Subsection (3).
 - (b) "Natural gas" includes coalbed methane gas.
- (10) "Natural gas liquids" means hydrocarbons, regardless of gravity, that are separated from natural gas as liquids in gas processing plants through the process of condensation, absorption, adsorption, or other methods.
- (11) "Nonconsenting owner" means an owner who after written notice does not consent in advance to the drilling and operation of a well or agree to bear his proportionate share of the costs.
- (12)
 - (a) "Oil" means crude oil, as defined in Subsection (5), condensate, as defined in Subsection (3), or any mixture of them.
 - (b) "Oil" does not include any gaseous or liquid substance processed from coal, oil shale, or tar sands.
- (13) "Oil and gas operations" means to explore for, develop, or produce oil and gas.
- (14)
 - (a) "Oil and gas proceeds" means any payment that:
 - (i) derives from oil and gas production from any well located in the state;
 - (ii) is expressed as a right to a specified interest in the:
 - (A) cash proceeds received from the sale of the oil and gas; or
 - (B) the cash value of the oil and gas; and
 - (iii) is subject to any tax withheld from the payment pursuant to law.
 - (b) "Oil and gas proceeds" includes a royalty interest, overriding royalty interest, production payment interest, or working interest.
 - (c) "Oil and gas proceeds" does not include a net profits interest or other interest the extent of which cannot be determined with reference to a specified share of:
 - (i) the cash proceeds received from the sale of the oil and gas; or
 - (ii) the cash value of the oil and gas.
- (15) "Operator" means a person who has been designated by the owners or the board to operate a well or unit.
- (16)

- (a) "Other gas" means nonhydrocarbon gases that:
 - (i) occur naturally in the gaseous phase in the reservoir; or
 - (ii) are injected into the reservoir in connection with pressure maintenance, gas cycling, or other secondary or enhanced recovery projects.
- (b) "Other gas" includes hydrogen sulfide, carbon dioxide, helium, and nitrogen.
- (17) "Owner" means a person who has the right:
 - (a) to drill into and produce from a reservoir; and
 - (b) appropriate the oil and gas produced for himself or for himself and others.
- (18) "Payor" means the person who undertakes to distribute oil and gas proceeds to the persons entitled to them, whether as the first purchaser of that production, as operator of the well from which the production was obtained, or as lessee under the lease on which royalty is due.
- (19) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both. Each zone of a general structure that is completely separated from any other zone in the structure is a separate pool. "Common source of supply" and "reservoir" are synonymous with "pool."
- (20) "Pooling" means the bringing together of separately owned interests for the common development and operation of a drilling unit.
- (21) "Producer" means the owner or operator of a well capable of producing oil and gas.
- (22) "Product" means any commodity made from oil and gas.
- (23) "Surface land" means privately owned land:
 - (a) overlying privately owned oil and gas resources;
 - (b) upon which oil and gas operations are conducted; and
 - (c) owned by a surface land owner.
- (24)
 - (a) "Surface land owner" means a person who owns, in fee simple absolute, all or part of the surface land as shown by the records of the county where the surface land is located.
 - (b) "Surface land owner" does not include the surface land owner's lessee, renter, tenant, or other contractually related person.
- (25) "Surface land owner's property" means a surface land owner's:
 - (a) surface land;
 - (b) crops on the surface land; and
 - (c) existing improvements on the surface land.
- (26) "Surface use agreement" means an agreement between an owner or operator and a surface land owner addressing:
 - (a) the use and reclamation of surface land owned by the surface land owner; and
 - (b) compensation for damage to the surface land caused by oil and gas operations that result in:
 - (i) loss of the surface land owner's crops on the surface land;
 - (ii) loss of value of existing improvements owned by the surface land owner on the surface land; and
 - (iii) permanent damage to the surface land.
- (27) "Waste" means:
 - (a) the inefficient, excessive, or improper use or the unnecessary dissipation of oil or gas or reservoir energy;
 - (b) the inefficient storing of oil or gas;
 - (c) the locating, drilling, equipping, operating, or producing of any oil or gas well in a manner that causes:
 - (i) a reduction in the quantity of oil or gas ultimately recoverable from a reservoir under prudent and economical operations;

- (ii) unnecessary wells to be drilled; or
- (iii) the loss or destruction of oil or gas either at the surface or subsurface; or
- (d) the production of oil or gas in excess of:
 - (i) transportation or storage facilities; or
 - (ii) the amount reasonably required to be produced as a result of the proper drilling, completing, testing, or operating of a well or otherwise utilized on the lease from which it is produced.

Amended by Chapter 342, 2012 General Session

40-6-3 Waste prohibited.

The waste of oil or gas is prohibited.

Enacted by Chapter 205, 1985 General Session

40-6-4 Board of Oil, Gas, and Mining created -- Functions -- Appointment of members -- Terms -- Chair -- Quorum -- Expenses.

- (1)
 - (a) There is created within the Department of Natural Resources the Board of Oil, Gas, and Mining.
 - (b) The board shall be the policy making body for the Division of Oil, Gas, and Mining.
- (2)
 - (a) The board shall consist of seven members appointed by the governor with the consent of the Senate.
 - (b) No more than four members shall be from the same political party.
 - (c) In accordance with the requirements of Section 79-2-203, the members appointed under Subsection (2)(a) shall include the following:
 - (i) two members who are knowledgeable in mining matters;
 - (ii) two members who are knowledgeable in oil and gas matters;
 - (iii) one member who is knowledgeable in ecological and environmental matters;
 - (iv) one member who:
 - (A) is a private land owner;
 - (B) owns a mineral or royalty interest; and
 - (C) is knowledgeable in mineral or royalty interests; and
 - (v) one member who is knowledgeable in geological matters.
- (3)
 - (a) Except as required by Subsection (3)(b), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.
 - (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.
 - (c) A member shall hold office until the expiration of the member's term and until the member's successor is appointed, but not more than 90 days after the expiration of the member's term.
- (4)
 - (a) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term by the governor with the consent of the Senate.
 - (b) The person appointed shall have the same qualifications as the person's predecessor.
- (5)
 - (a) The board shall appoint its chair from the membership.

- (b) Four members of the board shall constitute a quorum for the transaction of business and the holding of hearings.
- (6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 243, 2013 General Session

40-6-5 Jurisdiction of board -- Rules.

- (1) The board has jurisdiction over all persons and property necessary to enforce this chapter. The board shall enact rules in accordance with the Utah Administrative Rulemaking Act.
- (2) The board shall adopt rules and make orders as necessary to administer the following provisions:
 - (a) Ownership of all facilities for the production, storage, treatment, transportation, refining, or processing of oil and gas shall be identified.
 - (b) Well logs, directional surveys, and reports on well location, drilling, and production shall be made and filed with the division. Logs of wells marked "confidential" shall be kept confidential for one year after the date on which the log is required to be filed, unless the operator gives written permission to release the log at an earlier date. Production reports shall be:
 - (i) filed monthly;
 - (ii) accurate; and
 - (iii) in a form that reasonably serves the needs of state agencies and private fee owners.
 - (c) Monthly reports from gas processing plants shall be filed with the division.
 - (d) Wells shall be drilled, cased, operated, and plugged in such manner as to prevent:
 - (i) the escape of oil, gas, or water out of the reservoir in which they are found into another formation;
 - (ii) the detrimental intrusion of water into an oil or gas reservoir;
 - (iii) the pollution of fresh water supplies by oil, gas, or salt water;
 - (iv) blowouts;
 - (v) cavings;
 - (vi) seepages;
 - (vii) fires; and
 - (viii) unreasonable:
 - (A) loss of a surface land owner's crops on surface land;
 - (B) loss of value of existing improvements owned by a surface land owner on surface land; and
 - (C) permanent damage to surface land.
 - (e) The drilling of wells shall not commence without an adequate and approved supply of water as required by Title 73, Chapter 3, Appropriation. This provision is not intended to impose any additional legal requirements, but to assure that existing legal requirements concerning the use of water have been met prior to the commencement of drilling.
 - (f) The operator shall furnish a reasonable performance bond or other good and sufficient surety, conditioned for the performance of the duty to:
 - (i) plug each dry or abandoned well;
 - (ii) repair each well causing waste or pollution;
 - (iii) maintain and restore the well site; and

- (iv) except as provided in Subsection (8), protect a surface land owner against unreasonable:
 - (A) loss of a surface land owner's crops on surface land;
 - (B) loss of value of existing improvements owned by a surface land owner on surface land;
 - and
 - (C) permanent damage to surface land.
- (g) Production from wells shall be separated into oil and gas and measured by means and upon standards that will be prescribed by the board and will reflect current industry standards.
- (h) Crude oil obtained from any reserve pit, disposal pond or pit, or similar facility, and any accumulation of nonmerchantable waste crude oil shall be treated and processed, as prescribed by the board.
- (i) Any person who produces, sells, purchases, acquires, stores, transports, refines, or processes oil or gas or injects fluids for cycling, pressure maintenance, secondary or enhanced recovery, or salt water disposal in this state shall maintain complete and accurate records of the quantities produced, sold, purchased, acquired, stored, transported, refined, processed, or injected for a period of at least six years. The records shall be available for examination by the board or its agents at any reasonable time. Rules enacted to administer this subsection shall be consistent with applicable federal requirements.
- (j) Any person with an interest in a lease shall be notified when all or part of that interest in the lease is sold or transferred.
- (3) The board has the authority to regulate:
 - (a) all operations for and related to the production of oil or gas including:
 - (i) drilling, testing, equipping, completing, operating, producing, and plugging of wells; and
 - (ii) reclamation of sites;
 - (b) the spacing and location of wells;
 - (c) operations to increase ultimate recovery, such as:
 - (i) cycling of gas;
 - (ii) the maintenance of pressure; and
 - (iii) the introduction of gas, water, or other substances into a reservoir;
 - (d) the disposal of salt water and oil-field wastes;
 - (e) the underground and surface storage of oil, gas, or products; and
 - (f) the flaring of gas from an oil well.
- (4) For the purposes of administering this chapter, the board may designate:
 - (a) wells as:
 - (i) oil wells; or
 - (ii) gas wells; and
 - (b) pools as:
 - (i) oil pools; or
 - (ii) gas pools.
- (5) The board has exclusive jurisdiction over:
 - (a) class II injection wells, as defined by the federal Environmental Protection Agency or any successor agency; and
 - (b) pits and ponds in relation to these injection wells.
- (6) The board has jurisdiction:
 - (a) to hear any questions regarding multiple mineral development conflicts with oil and gas operations if there:
 - (i) is potential injury to other mineral deposits on the same lands; or
 - (ii) are simultaneous or concurrent operations conducted by other mineral owners or lessees affecting the same lands; and

- (b) to enter its order or rule with respect to those questions.
- (7) The board has enforcement powers with respect to operators of minerals other than oil and gas as are set forth in Section 40-6-11, for the sole purpose of enforcing multiple mineral development issues.
- (8) The provisions of Subsection (2)(f)(iv) do not apply if the surface land owner is a party to, or a successor of a party to:
 - (a) a lease of the underlying privately owned oil and gas;
 - (b) a surface use agreement applicable to the surface land owner's surface land; or
 - (c) a contract, waiver, or release addressing an owner's or operator's use of the surface land owner's surface land.

Amended by Chapter 342, 2012 General Session

40-6-6 Drilling units -- Establishment by board -- Modifications -- Prohibitions.

- (1) The board may order the establishment of drilling units for a pool.
- (2) Within each drilling unit, only one well may be drilled for production from the common source of supply, except as provided in Subsections (6) and (7).
- (3) A drilling unit may not be smaller than the maximum area that can be efficiently and economically drained by one well.
- (4)
 - (a) Each drilling unit within a pool shall be of uniform size and shape, unless the board finds that it must make an exception due to geologic, geographic, or other factors.
 - (b) If the board finds it necessary to divide a pool into zones and establish drilling units for each zone, drilling units may differ in size and shape for each zone.
- (5) An order of the board that establishes drilling units for a pool shall:
 - (a) be made upon terms and conditions that are just and reasonable;
 - (b) include all lands determined by the board to overlay the pool;
 - (c) specify the acreage and shape of each drilling unit as determined by the board; and
 - (d) specify the location of the well in terms of distance from drilling unit boundaries and other wells.
- (6) The board may establish a drilling unit and concurrently authorize the drilling of more than one well in a drilling unit if the board finds that:
 - (a) engineering or geologic characteristics justify the drilling of more than one well in that drilling unit; and
 - (b) the drilling of more than one well in the drilling unit will not result in waste.
- (7) The board may modify an order that establishes drilling units for a pool to provide for:
 - (a) an exception to the authorized location of a well;
 - (b) the inclusion of additional areas which the board determines overlays the pool;
 - (c) the increase or decrease of the size of drilling units; or
 - (d) the drilling of additional wells within drilling units.
- (8)
 - (a) After an order establishing drilling units has been entered by the board, the drilling of a well into the pool at a location other than that authorized by the order is prohibited.
 - (b) The operation of a well drilled in violation of an order fixing drilling units is prohibited.

Amended by Chapter 44, 2015 General Session

40-6-6.5 Pooling of interests for the development and operation of a drilling unit -- Board may order pooling of interests -- Payment of costs and royalty interests -- Monthly accounting.

- (1) Two or more owners within a drilling unit may bring together their interests for the development and operation of the drilling unit.
- (2)
 - (a) In the absence of a written agreement for pooling, the board may enter an order pooling all interests in the drilling unit for the development and operation of the drilling unit.
 - (b) The order shall be made upon terms and conditions that are just and reasonable.
 - (c) The board may adopt terms appearing in an operating agreement:
 - (i) for the drilling unit that is in effect between the consenting owners;
 - (ii) submitted by any party to the proceeding; or
 - (iii) submitted by its own motion.
- (3)
 - (a) Operations incident to the drilling of a well upon any portion of a drilling unit covered by a pooling order shall be deemed for all purposes to be the conduct of the operations upon each separately owned tract in the drilling unit by the several owners.
 - (b) The portion of the production allocated or applicable to a separately owned tract included in a drilling unit covered by a pooling order shall, when produced, be deemed for all purposes to have been produced from that tract by a well drilled on it.
- (4)
 - (a)
 - (i) Each pooling order shall provide for the payment of just and reasonable costs incurred in the drilling and operating of the drilling unit, including:
 - (A) the costs of drilling, completing, equipping, producing, gathering, transporting, processing, marketing, and storage facilities;
 - (B) reasonable charges for the administration and supervision of operations; and
 - (C) other costs customarily incurred in the industry.
 - (ii) An owner is not liable under a pooling order for costs or losses resulting from the gross negligence or willful misconduct of the operator.
 - (b) Each pooling order shall provide for reimbursement to the consenting owners for any nonconsenting owner's share of the costs out of production from the drilling unit attributable to the nonconsenting owner's tract.
 - (c) Each pooling order shall provide that each consenting owner shall own and be entitled to receive, subject to royalty or similar obligations:
 - (i) the share of the production of the well applicable to the consenting owner's interest in the drilling unit; and
 - (ii) unless the consenting owner has agreed otherwise, the consenting owner's proportionate part of the nonconsenting owner's share of the production until costs are recovered as provided in Subsection (4)(d).
 - (d)
 - (i) Each pooling order shall provide that each nonconsenting owner shall be entitled to receive, subject to royalty or similar obligations, the share of the production of the well applicable to the nonconsenting owner's interest in the drilling unit after the consenting owners have recovered from the nonconsenting owner's share of production the following amounts less any cash contributions made by the nonconsenting owner:

- (A) 100% of the nonconsenting owner's share of the cost of surface equipment beyond the wellhead connections, including stock tanks, separators, treaters, pumping equipment, and piping;
 - (B) 100% of the nonconsenting owner's share of the estimated cost to plug and abandon the well as determined by the board;
 - (C) 100% of the nonconsenting owner's share of the cost of operation of the well commencing with first production and continuing until the consenting owners have recovered all costs; and
 - (D) an amount to be determined by the board but not less than 150% nor greater than 400% of the nonconsenting owner's share of the costs of staking the location, wellsite preparation, rights-of-way, rigging up, drilling, reworking, recompleting, deepening or plugging back, testing, and completing, and the cost of equipment in the well to and including the wellhead connections.
- (ii) The nonconsenting owner's share of the costs specified in Subsection (4)(d)(i) is that interest which would have been chargeable to the nonconsenting owner had the nonconsenting owner initially agreed to pay the nonconsenting owner's share of the costs of the well from commencement of the operation.
 - (iii) A reasonable interest charge may be included if the board finds it appropriate.
- (e) If there is any dispute about costs, the board shall determine the proper costs.
- (5) If a nonconsenting owner's tract in the drilling unit is subject to a lease or other contract for the development of oil and gas, the pooling order shall provide that the consenting owners shall pay any royalty interest or other interest in the tract not subject to the deduction of the costs of production from the production attributable to that tract.
- (6)
 - (a) If a nonconsenting owner's tract in the drilling unit is not subject to a lease or other contract for the development of oil and gas, the pooling order shall provide that the nonconsenting owner shall receive as a royalty:
 - (i) the acreage weighted average landowner's royalty based on each leased fee and privately owned tract within the drilling unit, proportionately reduced by the percentage of the nonconsenting owner's interest in the drilling unit; or
 - (ii) if there is no leased fee or privately owned tract within the drilling unit other than the one owned by the nonconsenting owner, 16-2/3% proportionately reduced by the percentage of the nonconsenting owner's interest in the drilling unit.
 - (b) The royalty shall be:
 - (i) determined prior to the commencement of drilling; and
 - (ii) paid from production attributable to each tract until the consenting owners have recovered the costs specified in Subsection (4)(d).
- (7) Once the consenting owners have recovered the costs, as described in Subsection (6)(b)(ii), the royalty shall be merged back into the nonconsenting owner's working interest and shall be terminated.
- (8) The operator of a well under a pooling order in which there is a nonconsenting owner shall furnish the nonconsenting owner with monthly statements specifying:
 - (a) costs incurred;
 - (b) the quantity of oil or gas produced; and
 - (c) the amount of oil and gas proceeds realized from the sale of the production during the preceding month.
- (9) Each pooling order shall provide that when the consenting owners recover from a nonconsenting owner's relinquished interest the amounts provided for in Subsection (4)(d):

- (a) the relinquished interest of the nonconsenting owner shall automatically revert to him;
 - (b) the nonconsenting owner shall from that time:
 - (i) own the same interest in the well and the production from it; and
 - (ii) be liable for the further costs of the operation as if he had participated in the initial drilling and operation; and
 - (c) costs are payable out of production unless otherwise agreed between the nonconsenting owner and the operator.
- (10) Each pooling order shall provide that in any circumstance where the nonconsenting owner has relinquished his share of production to consenting owners or at any time fails to take his share of production in-kind when he is entitled to do so, the nonconsenting owner is entitled to:
- (a) an accounting of the oil and gas proceeds applicable to his relinquished share of production; and
 - (b) payment of the oil and gas proceeds applicable to that share of production not taken in-kind, net of costs.

Amended by Chapter 404, 2014 General Session

40-6-7 Agreements for repressuring or pressure maintenance or cycling or recycling operations -- Plan for development and operation of pool or field.

- (1) An agreement for repressuring or pressure maintenance operations, cycling or recycling operations, including the extraction and separation of liquid hydrocarbons from natural gas, or for carrying on any other methods of unit or cooperative development or operation of a field or pool or a part of either, is authorized and may be performed, and shall not be held or construed to violate any statutes relating to trusts, monopolies, or contracts and combinations in restraint of trade, if the agreement is approved by the board as being in the public interest and promotes conservation, increases ultimate recovery and prevents waste of oil or gas provided the agreement protects the correlative rights of each owner or producer.
- (2) A plan for the development and operation of a pool or field shall be presented to the board and may be approved after notice and hearing.

Enacted by Chapter 205, 1983 General Session

40-6-8 Field or pool units -- Procedure for establishment -- Operation.

- (1) The board may hold a hearing to consider the need for the operation as a unit of one or more pools or parts of them in a field.
- (2) The board shall make an order providing for the unit operation of a pool or part of it, if the board finds that:
 - (a) Such operation is reasonably necessary for the purposes of this chapter; and
 - (b) The value of the estimated additional recovery of oil or gas substantially exceeds the estimated additional cost incident to conducting such operations.
- (3) The order shall prescribe a plan for unit operations that shall include:
 - (a) a description of the lands and of the pool or pools or parts of them to be so operated, termed the unit area;
 - (b) a statement of the nature of the operations contemplated;
 - (c) an allocation to the separately owned tracts in the unit area of all the oil and gas that is produced from the unit area and is saved, being the production that is not used in the conduct of operations on the unit area or not unavoidably lost. The allocation shall be in accord with the agreement, if any, of the interested parties. If there is no such agreement, the board shall

- determine the relative value, from evidence introduced at the hearing of the separately owned tracts in the unit area, exclusive of physical equipment, for development of oil and gas by unit operations, and the production allocated to each tract shall be the proportion that the relative value of each tract so determined bears to the relative value of all tracts in the unit area;
- (d) a provision for adjustment among the owners of the unit area (not including royalty owners) of their respective investment in wells, tanks, pumps, machinery, materials, equipment, and other things and services of value attributable to the unit operations. The amount to be charged unit operations for any such item shall be determined by the owners of the unit area (not including royalty owners); but if the owners of the unit area are unable to agree upon the amount or correctness, the board shall determine them. The net amount charged against the owner of an interest in a separately owned tract shall be considered expense of unit operation chargeable against his interest in the tract. The adjustments provided for may be treated separately and handled by agreements separate from the unitization agreement;
 - (e) a provision providing how the costs of unit operations, including capital investments, shall be determined and charged to the separately owned tracts and how these costs shall be paid, including a provision providing a procedure for the unit production allocated to an owner who does not pay the share of the cost of unit operations charged to such owner, or the interest of such owner, to be sold and the proceeds applied to the payment of such costs. The operator of the unit shall have a first and prior lien for costs incurred pursuant to the plan of unitization upon each owner's oil and gas rights and his share of unitized production to secure the payment of such owner's proportionate part of the cost of developing and operating the unit area. This lien may be enforced in the same manner as provided by Title 38, Chapter 1a, Part 7, Enforcement of Preconstruction and Construction Liens. For such purposes any nonconsenting owner shall be deemed to have contracted with the unit operator for his proportionate part of the cost of developing and operating the unit area. A transfer or conversion of any owner's interest or any portion of it, however accomplished, after the effective date of the order creating the unit, shall not relieve the transferred interest of the operator's lien on said interest for the cost and expense of unit operations;
 - (f) a provision, if necessary, for carrying or otherwise financing any owner who elects to be carried or otherwise financed, allowing a reasonable interest charge for such service payable out of such owner's share of the production;
 - (g) a provision for the supervision and conduct of the unit operations, in respect to which each owner shall have a percentage vote corresponding to the percentage of the costs of unit operations chargeable against the interest of the owner;
 - (h) the time when the unit operations shall commence, and the manner in which, and the circumstances under which, the unit operations shall terminate;
 - (i) such additional provisions that are found to be appropriate for carrying on the unit operations, and for the protection of correlative rights; and
 - (j) the designation of a unit operator.
- (4) No order of the board providing for unit operations of a pool or pools shall become effective unless and until the plan for unit operations prescribed by the division has been approved in writing by those owners who, under the board's order, will be required to pay 70% of the costs of the unit operation, and also by the owners of 70% of the production or proceeds that will be credited to interests which are free of cost, such as royalties, overriding royalties, and production payments, and the board has made a finding, either in the order providing for unit operations or in a supplemental order, that the plan for unit operations has been so approved. If the persons owning required percentage of interest in that unit area do not approve the plan for unit operations within a period of six months from the date on which the order providing for

- unit operations is made, the order shall be ineffective and shall be revoked by the board unless for good cause shown the board extends this time.
- (5) An order providing for unit operations may be amended by an order made by the board in the same manner and subject to the same conditions as an original order providing for unit operations, provided:
- (a) If such an amendment affects only the rights and interests of the owners, the approval of the amendment by the owners of royalty, overriding royalty, production payments and other such interests which are free of costs shall not be required.
 - (b) No such order of amendment shall change the percentage for the allocation of oil and gas as established for any separately owned tract by the original order, or change the percentage for allocation of cost as established for any separately owned tract by the original order.
- (6) The board, by an order, may provide for the unit operation of a pool or pools or parts thereof that embrace a unit area established by a previous order of the division. The order, in providing for the allocation of unit production, shall first treat the unit area previously established as a single tract, and the portion of the unit production allocated shall then be allocated among the separately owned tracts included in the previously established unit area in the same proportions of those specified in the previous order.
- (7) An order may provide for unit operations on less than the whole of a pool where the unit area is of such size and shape as may be reasonably required for that purpose, and the conduct will have no adverse effect upon other portions of the pool.
- (8) All operations, including, but not limited to, the commencement, drilling, or operation of a well upon any portion of the unit area shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the unit area by the several owners. The portions of the unit production allocated to a separately owned tract in a unit area shall, when produced, be deemed, for all purposes, to have been actually produced from such tract by a well drilled. Operations conducted pursuant to an order of the board providing for unit operations shall constitute a fulfillment of all the express or implied obligations for each lease or contract covering lands in the unit area to the extent that compliance with such obligations cannot be had because of the order of the board.
- (9) The portion of the unit production allocated to any tract, and the proceeds from the sale, shall be the property and income of the several owners, subject to the rights of royalty owners, to whom, or to whose credit, they are allocated or payable under the order providing for unit operations.
- (10) No division order or other contract relating to the sale or purchase of production from a separately owned tract shall be terminated by the order providing for unit operations but shall remain in force and apply to oil and gas allocated to such tract until terminated in accordance with the provisions thereof.
- (11) Except to the extent that the parties affected agree and as provided in Subsection (3)(e), no order providing for unit operations shall be construed to result in a transfer of all or any part of the title of any person to the oil and gas rights in any tract in the unit area. All property, whether real or personal, that may be acquired in the conduct of unit operations hereunder shall be acquired for the account of the owners within the unit area and shall be the property of the owners in the proportion that the expenses of unit operations are charged, unless otherwise provided in the plan of unit operation.
- (12) This section shall apply only to field or pool units and shall not apply to the unitization of interests within a drilling unit as may be authorized and governed under the provisions of Section 40-6-6.

Amended by Chapter 278, 2012 General Session

40-6-9 Proceeds from sale of production -- Payment of proceeds -- Requirements -- Proceeding on petition to determine cause of nonpayment -- Remedies -- Penalties.

- (1)
 - (a) The oil and gas proceeds derived from the sale of production from any well producing oil or gas in the state shall be paid to any person legally entitled to the payment of the proceeds not later than 180 days after the first day of the month following the date of the first sale and thereafter not later than 30 days after the end of the calendar month within which payment is received by the payor for production, unless other periods or arrangements are provided for in a valid contract with the person entitled to the proceeds.
 - (b) The payment shall be made directly to the person entitled to the payment by the payor.
 - (c) The payment is considered to have been made upon deposit in the United States mail.
- (2) Payments shall be remitted to any person entitled to oil and gas proceeds annually for the aggregate of up to 12 months accumulation of proceeds, if the total amount owed is \$100 or less.
- (3)
 - (a) Any delay in determining whether a person is legally entitled to an interest in the oil and gas proceeds does not affect payments to other persons entitled to payment.
 - (b)
 - (i) If accrued payments cannot be made within the time limits specified in Subsection (1) or (2), the payor shall deposit all oil and gas proceeds credited to the eventual oil and gas proceeds owner to an escrow account in a federally insured bank or savings and loan institution using a standard escrow document form.
 - (ii) The deposit shall earn interest at the highest rate being offered by that institution for the amount and term of similar demand deposits.
 - (iii) The escrow agent may commingle money received into escrow from any one lessee or operator, purchaser, or other person legally responsible for payment.
 - (iv) Payment of principal and accrued interest from the escrow account shall be made by the escrow agent to the person legally entitled to them within 30 days from the date of receipt by the escrow agent of final legal determination of entitlement to the payment.
 - (v) Applicable escrow fees shall be deducted from the payments.
- (4) Any person entitled to oil and gas proceeds may file a petition with the board to conduct a hearing to determine why the proceeds have not been paid.
- (5) Upon receipt of the petition, the board shall set the matter for investigation and negotiation by the division within 60 days.
- (6)
 - (a) If the matter cannot be resolved by negotiation as of that date, the board may set a hearing within 30 days.
 - (b) If the board does not set a hearing, any information gathered during the investigation and negotiation shall be given to the petitioner who may then seek a remedy in a court of competent jurisdiction.
- (7)
 - (a) If, after a hearing, the board finds the proceeds have not been deposited in an interest bearing escrow account in accordance with Subsection (3), the board may order that:
 - (i) a complete accounting be made; and

- (ii) the proceeds be subject to an interest rate of 1-1/2% per month, as a substitute for an escrow account interest rate, accruing from the date the payment should have been suspended in accordance with Subsection (3).
 - (b) If, after a hearing, the board finds the delay of payment is without reasonable justification, the board may:
 - (i) if the proceeds have been deposited in an interest bearing escrow account in accordance with Subsection (3):
 - (A) order a complete accounting;
 - (B) require the proceeds and accruing interest to remain in the escrow account; and
 - (C) assess a penalty of up to 25% of the total proceeds and interest in the escrow account; or
 - (ii) if the proceeds have not been deposited in an interest bearing escrow account in accordance with Subsection (3), assess a penalty of up to 25% of the total proceeds and interest as determined under Subsection (7)(a).
 - (c)
 - (i) Upon finding that the delay of payment is without reasonable justification, the board shall set a date not later than 90 days from the hearing for final distribution of the total sum.
 - (ii) If payment is not made by the required date, the total proceeds, interest, and any penalty as provided in Subsection (7)(b) shall be subject to interest at a rate of 1-1/2% per month until paid.
 - (d) If, after a hearing, the board finds the delay of payment is with reasonable justification and the proceeds have been deposited in an interest bearing escrow account in accordance with Subsection (3), the payor may not be required to make an accounting or payment of appropriately suspended proceeds until the condition which justified suspension has been satisfied.
- (8) The circumstances under which the board may find the suspension of payment of proceeds is made with reasonable justification, such that the penalty provisions of Subsections (7)(b) and (7)(c)(ii) do not apply, include, but are not limited to, the following:
- (a) the payor:
 - (i) fails to make the payment in good faith reliance upon a title opinion by a licensed Utah attorney objecting to the lack of good and marketable title of record of the person claiming entitlement to payment; and
 - (ii) furnishes a copy of the relevant portions of the opinion to the person for necessary curative action;
 - (b) the payor receives information which:
 - (i) in the payor's good faith judgment, brings into question the entitlement of the person claiming the right to the payment to receive that payment;
 - (ii) has rendered the title unmarketable; or
 - (iii) may expose the payor to the risk of liability to third parties if the payment is made;
 - (c) the total amount of oil and gas proceeds in possession of the payor owed to the person making claim to payment is less than \$100 at the end of any month; or
 - (d) the person entitled to payment has failed or refused to execute a division or transfer order acknowledging the proper interest to which the person claims to be entitled and setting forth the mailing address to which payment may be directed, provided the division or transfer order does not alter or amend the terms of the lease.
- (9) If the circumstances described in Subsection (8)(a) or (b) arise, the payor may:
- (a) suspend and escrow the payments in accordance with Subsection (3); or

- (b) at the request and expense of the person claiming entitlement to the payment, make the payment into court on an interpleader action to resolve the claim and avoid liability under this chapter.

Amended by Chapter 324, 2010 General Session

40-6-9.1 Payment information to royalty owners.

- (1) When payment is made to an owner of a royalty interest for the sale of oil or gas produced from that royalty interest pursuant to the requirements of Section 40-6-9, the following information shall be included on the payor's check stub or on an attachment to the form of payment:
 - (a) the lease, property, or well name, and any lease, property, or well identification number from which production is attributed;
 - (b) the month and year of the sales included in the payment;
 - (c) the total volume of oil or gas sold, as measured by the means and upon the standards prescribed by the board pursuant to Subsection 40-6-5(2)(g);
 - (d) the average price per unit of oil or gas sold;
 - (e) the total amount of state severance, ad valorem, and other production taxes;
 - (f) a list of any other deductions or adjustments;
 - (g) the net value of total sales after taxes are deducted;
 - (h) the royalty owner's interest, expressed as a decimal number, in sales from the lease, property, or well;
 - (i) the royalty owner's share of the total value of sales prior to any deductions;
 - (j) the royalty owner's proportionate share of the sales value less the royalty owner's proportionate share of the deductions, as applicable; and
 - (k) an address at which additional information pertaining to the royalty owner's interest in production may be obtained and questions may be answered.
- (2)
 - (a) A royalty owner who fails to receive the information required by this section may notify the board by certified mail of the problem and request that the division conduct an investigation.
 - (b) The division shall conduct the investigation and report to the board concerning:
 - (i) whether the matter has been resolved; or
 - (ii) whether further action is necessary and its recommendations for resolution of the matter.
 - (c) The board may take any action it considers necessary to resolve the matter pursuant to the provisions of this chapter.
- (3) A royalty owner damaged by a violation of this section may proceed as provided in Subsection 40-6-11(7).

Enacted by Chapter 132, 1995 General Session

40-6-9.5 Permits for crude oil production -- Application -- Bond requirement -- Closure of facilities -- Availability of records.

- (1) The division may issue permits authorizing construction, operation, maintenance, and cessation of treating facilities and operations covered by Subsection 40-6-5(2)(h) and to approve, as part of that permit, post-cessation reclamation of the site.
- (2) Each owner and operator of any facility described in Subsection 40-6-5(2)(h) or planning to construct, operate, or maintain a facility described in Subsection 40-6-5(2)(h) shall submit to the division an application stating in detail the location, type, and capacity of the facility contemplated; the extent and location of area disturbed or to be disturbed including, but not

limited to, any pits, ponds, or lands, associated with the facility; a plan for reclamation of the site; and other materials required by the division. All existing facilities described in Subsection 40-6-5(2)(h) shall submit plans by July 28, 1985. Application for all planned facilities must be approved and a permit issued before any ground clearing or construction may occur.

- (3) As a condition for approval of any permit, the owner and operator shall post a bond in an amount determined by the division to cover reclamation costs for the site. Approval of any permit is also conditioned upon compliance with all laws, rules, and orders of the board. Failure to post the bond is considered sufficient grounds to deny a permit.
- (4) The board may order the closure of any facility described in Subsection 40-6-5(2)(h) if an application is not forthcoming in the time allowed in Subsection (2), a bond is not posted, a violation of the rules and regulations of other state or federal agencies exists, or for other material and substantial cause.
- (5) The owner and operator are subject to all applicable state, federal, and local rules and regulations.
- (6) The records required to be kept by Subsection 40-6-5(2)(i) shall be available for inspection and audit by the board or its agents during reasonable working hours.

Amended by Chapter 22, 1989 General Session

40-6-10 Procedures -- Adjudicative proceedings -- Emergency orders -- Hearing examiners.

- (1)
 - (a) The Board of Oil, Gas, and Mining and the Division of Oil, Gas, and Mining shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in their adjudicative proceedings.
 - (b) The board shall enact rules governing its practice and procedure that are not inconsistent with Title 63G, Chapter 4, Administrative Procedures Act.
- (2) When an emergency requiring immediate action is found by the division director or any board member to exist, the division director or board member may issue an emergency order according to the requirements and procedures of Title 63G, Chapter 4, Administrative Procedures Act.
- (3) A notice required by this chapter, except as otherwise provided, shall be given at the election of the board by:
 - (a) personal service; or
 - (b)
 - (i) one publication in:
 - (A) a daily newspaper of general circulation in the city of Salt Lake and county of Salt Lake, Utah; and
 - (B) all newspapers of general circulation published in the county where the land is affected, or some part of the land is situated; and
 - (ii) electronic publication in accordance with Section 45-1-101.
- (4)
 - (a) Any order made by the board is effective on issuance.
 - (b) All rules and orders issued by the board shall be:
 - (i) in writing;
 - (ii) entered in full in books to be kept by the board for that purpose;
 - (iii) indexed; and
 - (iv) public records open for inspection at all times during reasonable office hours.

- (c) A copy of any rule, finding of fact, or order, certified by the board or by the division director, shall be received in evidence in all courts of this state with the same effect as the original.
- (5) The board may act upon its own motion or upon the petition of any interested person.
- (6)
 - (a) The board may appoint a hearing examiner to take evidence and to recommend findings of fact and conclusions of law to the board.
 - (b) Any member of the board, division staff, or any other person designated by the board may serve as a hearing examiner.
 - (c) The board may enter an order based on the recommendations of the examiner.

Amended by Chapter 5, 2009 Special Session 1

Amended by Chapter 5, 2009 Special Session 1

40-6-11 Power to summon witnesses, administer oaths and require production of records -- Enforcement -- Penalties for violation of chapter or rules -- Illegal oil or gas -- Civil liability.

- (1) The board may summon witnesses, administer oaths, and require the production of records, books, and documents for examination at any hearing or investigation conducted by it.
- (2)
 - (a) If any person fails or refuses to comply with a subpoena issued by the board, or fails or refuses to testify about any matter, the board may apply to any district court in the state for an order compelling that person to comply with the subpoena, and to attend before the board and produce the subpoenaed records, books, and documents for examination, and to give his testimony.
 - (b) The court may punish the person for contempt as if he disobeyed a subpoena issued by the court, or if he refused to testify in a court.
- (3)
 - (a) Whenever it appears that any person is violating any provision of this chapter or any rule or order made under the authority of this chapter, the board may issue an order requiring compliance within a period not to exceed 30 days.
 - (b) The board may bring suit in the name of the state against any person violating this chapter, or rules or orders made under the authority of this chapter if:
 - (i) the violation continues after expiration of the time period granted in Subsection (3)(a);
 - (ii) the violation presents an immediate threat to public health, safety, or welfare; or
 - (iii) the violation would cause waste.
- (4)
 - (a) If the board determines, after an adjudicative proceeding, that any person has violated any provision of this chapter, or any permit, rule, or order made under the provisions of this chapter, that person is subject, in a civil proceeding, to a penalty not exceeding \$5,000 per day for each day of violation.
 - (b) If the board determines that the violation is willful, that person may be fined not more than \$10,000 for each day of violation.
- (5) If ordered to do so by the board, the director of the division may order the immediate closure or shutdown of any well that is operating in violation of the provisions of this chapter, if the closure or shutdown will not cause waste or is necessary because of an immediate threat to public health, safety, or welfare.
- (6)
 - (a) No person may sell, purchase, acquire, transport, refine, process, or handle illegal oil, gas, or product, if the person knows or has reason to know that the oil, gas, or product is illegal.

- (b) The court in the district where the illegal oil, gas, or product is found, shall, after notice and hearing in an action brought by the board, order the product to be seized and sold, and the proceeds returned or held for the legal owner.
- (7)
 - (a) Nothing in this chapter, and no suit by or against the board, and no violation charged or asserted against any person under any provisions of this chapter, or any rule or order issued under the authority of this chapter, shall impair, abridge, or delay any cause of action for damages that any person may have or assert against any person violating any provision of this chapter, or any rule or order issued under the authority of this chapter.
 - (b) Any person damaged by any violation may sue for and recover whatever damages that he otherwise may be entitled to receive.

Amended by Chapter 161, 1987 General Session

40-6-12 Evasion of chapter or orders -- Penalties -- Limitation of actions.

- (1)
 - (a) A person is guilty of a class A misdemeanor if, for the purpose of evading this chapter or any order of the board, he is convicted of any of the following:
 - (i) making or causing to be made any false entry in any report, record, account, or memorandum required by this chapter or by any order;
 - (ii) omitting or causing to be omitted from any report, record, account, or memorandum, full, true, and correct entries as required by this chapter or by any order; or
 - (iii) removing from this state or destroying, mutilating, altering, or falsifying any record, account, or memorandum.
 - (b) Upon conviction under Subsection (1), a person is subject to a fine of not more than \$5,000 or imprisonment for a term not exceeding six months, or to both fine and imprisonment.
- (2) Any suit, action, or other proceeding based upon a violation of this section may be commenced only within one year from the date of the alleged violation.

Amended by Chapter 330, 2009 General Session

40-6-13 Restrictions of production not authorized.

This act shall never be construed to require, permit or authorize the board or any court to make, enter or enforce any order, rule, regulation, or judgment requiring restriction of production of any pool or of any well (except a well drilled in violation of Section 40-6-6 hereof) to an amount less than the well or pool can produce unless such restriction is necessary to prevent waste and protect correlative rights, or the operation of a well without sufficient oil or gas production to cover current operating costs and provide a reasonable return, without regard to original drilling costs.

Enacted by Chapter 205, 1983 General Session

40-6-14 Fee on oil and gas -- Payment of fee -- Collection -- Penalty and interest on delinquencies -- Payment when product taken in-kind -- Interests exempt.

- (1)
 - (a) There is levied a fee as provided in Subsection (1)(b) for oil and gas:
 - (i) produced; and
 - (ii)
 - (A) saved;

- (B) sold; or
- (C) transported from the field in Utah where the oil or gas is produced.
- (b) The fee imposed under this Subsection (1) is equal to the product of:
 - (i) .002; and
 - (ii) the value of the oil or gas determined in accordance with Section 59-5-103.1.
- (2)
 - (a) The State Tax Commission shall administer the collection of the fee, including any penalties and interest.
 - (b) The money collected shall be deposited in the Oil and Gas Conservation Account created in Section 40-6-14.5.
 - (c) Time periods for the State Tax Commission to allow a refund or assess the fee shall be determined in accordance with Section 59-5-114.
- (3)
 - (a) Each person having an ownership interest in oil or gas at the time of production shall be liable for a proportionate share of the fee equivalent to that person's ownership interest.
 - (b) As used in this section "ownership interest" means any:
 - (i) working interest;
 - (ii) royalty interest;
 - (iii) interest in payments out of production; or
 - (iv) any other interest in the oil or gas, or in the proceeds of the oil or gas, subject to the fee.
- (4)
 - (a) The operator, on behalf of the operator and any person having an ownership interest in the oil or gas, shall pay the fee to the State Tax Commission:
 - (i) quarterly; and
 - (ii) as provided in Subsections (4)(b) and (c).
 - (b) For purposes of Subsection (4)(a), the quarterly fee payments are due as follows:
 - (i) for the quarter beginning on January 1 and ending on March 31, on or before June 1;
 - (ii) for the quarter beginning on April 1 and ending on June 30, on or before September 1;
 - (iii) for the quarter beginning on July 1 and ending on September 30, on or before December 1;
 - and
 - (iv) for the quarter beginning on October 1 and ending on December 31, on or before March 1 of the next year.
 - (c) The fee required by this section shall be reported to the State Tax Commission on forms provided by the State Tax Commission.
- (5)
 - (a) Any fee not paid within the time specified shall:
 - (i) carry a penalty as provided in Section 59-1-401; and
 - (ii) bear interest at the rate and in the manner prescribed in Section 59-1-402.
 - (b)
 - (i) The fee, together with the interest, shall be a lien upon the oil or gas against which the fee and interest are levied.
 - (ii) The operator shall deduct from any amounts due to the persons owning an interest in the oil or gas, or in the proceeds at the time of production, a proportionate amount of the charge before making payment to the persons.
- (6)
 - (a) When product is taken in-kind by an interest owner who is not the operator and the operator cannot determine the value of the in-kind product, the operator shall:
 - (i) report 100% of the production;

- (ii) deduct the product taken in-kind; and
 - (iii) pay the levy on the difference.
- (b) The interest owner who takes the product in-kind shall file a report and pay the levy on the interest owner's share of production excluded from the operator's report.
- (7) This section shall apply to any interest in oil or gas produced in the state except:
 - (a) any interest of the United States;
 - (b) any interest of the state or a political subdivision of the state in any oil or gas or in the proceeds of the oil or gas;
 - (c) any interest of any Indian or Indian tribe in any oil or gas or in the proceeds produced from land subject to the supervision of the United States; or
 - (d) oil or gas used in producing or drilling operations or for repressuring or recycling purposes.

Amended by Chapter 244, 2004 General Session

40-6-14.5 Oil and Gas Conservation Account created -- Contents -- Use of account money.

- (1) There is created within the General Fund a restricted account known as the Oil and Gas Conservation Account.
- (2) The contents of the account shall consist of:
 - (a) revenues from the fee levied under Section 40-6-14, including any penalties or interest charged for delinquent payments; and
 - (b) interest and earnings on account money.
- (3) Account money shall be used to pay for:
 - (a) the administration of this chapter;
 - (b) the plugging and reclamation of abandoned oil or gas wells or bore, core, or exploratory holes for which:
 - (i) there is no reclamation surety; or
 - (ii) the forfeited surety is insufficient for plugging and reclamation; and
 - (c) public educational programs designed to increase knowledge of mineral and petroleum resources and industries.
- (4) Priority in the use of the money shall be given to paying for the administration of this chapter.
- (5) Appropriations made in accordance with Subsections (3)(b) and (c) are nonlapsing.
- (6)
 - (a) The balance of the Oil and Gas Conservation Account at the end of a fiscal year may not exceed \$750,000.
 - (b) Any excess money at the end of the fiscal year above \$750,000 shall be transferred to the General Fund.

Amended by Chapter 149, 2011 General Session

Amended by Chapter 342, 2011 General Session

40-6-15 Division created -- Functions -- Director of division -- Qualifications of program administrators.

There is created within the Department of Natural Resources the Division of Oil, Gas, and Mining. The division shall implement the policies and orders of the board and perform all other duties delegated by the board.

The director of the Division of Oil, Gas, and Mining shall be appointed by the director of the Department of Natural Resources with the concurrence of the Board of Oil, Gas, and Mining. The director shall be the executive and administrative head of the Division of Oil, Gas, and Mining and

shall be a person experienced in administration and knowledgeable in the extraction of oil, gas, and minerals.

Within the division, the person administering the oil and gas program shall have the technical background to efficiently administer that program. The person administering the mining program shall have the technical background to efficiently administer that program.

Amended by Chapter 344, 2009 General Session

40-6-16 Duties of division.

In addition to the duties assigned by the board, the division shall:

- (1) develop and implement an inspection program that will include but not be limited to production data, pre-drilling checks, and site security reviews;
- (2) publish a monthly production report;
- (3) publish a monthly gas processing plant report;
- (4) review and evaluate, prior to a hearing, evidence submitted with the petition to be presented to the board;
- (5) require adequate assurance of approved water rights in accordance with rules and orders enacted under Section 40-6-5; and
- (6) notify the county executive of the county in which the drilling will take place in writing of the issuance of a drilling permit.

Amended by Chapter 227, 1993 General Session

40-6-17 Cooperative research and development projects.

The board and the Division of Oil, Gas, and Mining are authorized to enter into cooperative agreements with the national, state or local governments, and with independent organizations and institutions for the purpose of carrying out research and development experiments involving energy resources to the extent that the project is funded or partially funded and approved by the Legislature.

Amended by Chapter 344, 2009 General Session

40-6-18 Lands subject to chapter.

This act shall apply to all lands in the State of Utah, lawfully subject to its police power, and shall apply to lands of the United States or the lands subject to the jurisdiction of the United States.

Enacted by Chapter 205, 1983 General Session

40-6-19 Bond and Surety Forfeiture Trust Fund created -- Contents -- Use of fund money.

- (1) There is created a private-purpose trust fund known as the "Bond and Surety Forfeiture Trust Fund."
- (2) Money collected by the Division of Oil, Gas, and Mining as a result of bond or surety forfeitures shall be deposited in the fund.
- (3) Interest earned on money in the fund shall accrue to the fund.
- (4)
 - (a) Money from each forfeited bond or surety, together with interest, shall be used by the Division of Oil, Gas, and Mining to accomplish the requisite performance standards under the program to which the forfeited bond or surety corresponds.

(b) Any money not used for a project shall be returned to the rightful claimant.

Amended by Chapter 344, 2009 General Session

40-6-20 Use of surface land by owner or operator.

- (1) An owner or operator may:
- (a) enter onto surface land under which the owner or operator holds rights to conduct oil and gas operations; and
 - (b) use the surface land:
 - (i) to the extent reasonably necessary to conduct oil and gas operations; and
 - (ii) consistent with allowing the surface land owner the greatest possible use of the surface land owner's property, to the extent that the surface land owner's use does not interfere with the owner's or operator's oil and gas operations.
- (2) Subject to Subsection (3), except as is reasonably necessary to conduct oil and gas operations, an owner or operator shall:
- (a) mitigate the effects of accessing the surface land owner's surface land;
 - (b) minimize interference with the surface land owner's use of the surface land owner's property; and
 - (c) compensate a surface land owner for unreasonable:
 - (i) loss of a surface land owner's crops on the surface land;
 - (ii) loss of value to existing improvements owned by a surface land owner on the surface land; and
 - (iii) permanent damage to the surface land.
- (3) An owner or operator is not required to:
- (a) obtain location or spacing exceptions from the division or board; or
 - (b) utilize directional or horizontal drilling techniques that are not:
 - (i) technologically feasible;
 - (ii) economically practicable; or
 - (iii) reasonably available.
- (4) The requirements of Subsection (2) do not apply to the extent that they conflict with or impair a contractual provision relevant to an owner's or operator's use of surface land for oil and gas operations.
- (5)
- (a) The provisions of this section do not prevent:
 - (i) a person from seeking a remedy allowed by law; or
 - (ii) an owner or operator and a surface land owner from addressing the use of surface land for oil and gas operations through:
 - (A) a lease;
 - (B) a surface use agreement; or
 - (C) another written contract.
 - (b) An agreement described in Subsection (5)(a)(ii) shall control:
 - (i) the use of surface land for oil and gas operations; and
 - (ii) compensation for damage to the surface land caused by oil and gas operations.

Enacted by Chapter 342, 2012 General Session

40-6-21 Mediation.

- (1) A surface land owner and an owner or operator may request non-binding mediation by providing written notice to the other party, if:
 - (a) they are unable to agree on the amount of damages for unreasonable:
 - (i) crop loss on the surface land;
 - (ii) loss of value to existing improvements owned by the surface land owner on the surface land;
or
 - (iii) permanent damage to the surface land; and
 - (b) the dispute over damages described in Subsection (1)(a) relates to an application for a permit to drill submitted by the owner or operator to the division on or after July 1, 2012.
- (2) The division and the Utah Department of Agriculture and Food shall agree on, and maintain a list of, mediators qualified to mediate disputes between an owner or operator and a surface land owner.
- (3) An owner or operator and a surface land owner may mutually select a mediator from:
 - (a) the list maintained under Subsection (2); or
 - (b) any other source.
- (4) The surface land owner and the owner or operator shall equally share the cost of the mediator's services.
- (5) The provisions of this section do not prevent or delay an owner or operator from conducting oil and gas operations in accordance with applicable law.

Enacted by Chapter 342, 2012 General Session

Chapter 7

Oil and Gas Compact

40-7-1 Interstate compact to conserve oil and gas -- Authority for governor to join.

The governor of the state of Utah is authorized and directed, for and in the name of the state of Utah to join with the other states in the Interstate Oil Compact to Conserve Oil and Gas, which was executed in Dallas, Texas, on the 16th day of February, 1935, and has been extended to the 1st day of September, 1959, with the consent of Congress, and that said compact and all extensions are now on deposit with the department of state of the United States.

Enacted by Chapter 131, 1957 General Session

40-7-2 Authority for governor to execute extensions or withdraw from compact.

The governor of the state of Utah is authorized and empowered, for and in the name of the state of Utah to execute agreements for further extension of the expiration date of said compact to conserve oil and gas, and to determine if and when it shall be to the best interest of the state of Utah to withdraw from said compact upon 60 days' notice as provided by its terms. In the event that he shall determine that the state shall withdraw from said compact he shall have the power and authority to give necessary notice and to take any and all steps necessary and proper to effect the withdrawal of the state of Utah from said compact.

Enacted by Chapter 131, 1957 General Session

40-7-3 Official representative -- Assistant representative.

The governor shall be the official representative of the state of Utah on the "Interstate Oil Compact Commission" provided for in the compact to conserve oil and gas, and shall exercise and perform for the state all of the powers and duties as members of the Interstate Oil Compact Commission; provided, however, that he shall have the authority to appoint an assistant representative who shall act in his stead as the official representative of the state of Utah as a member of said commission.

Enacted by Chapter 131, 1957 General Session

Chapter 8

Utah Mined Land Reclamation Act

40-8-1 Short title.

This act shall be known and may be cited as the "Utah Mined Land Reclamation Act."

Enacted by Chapter 130, 1975 General Session

40-8-2 Legislative findings.

The Utah Legislature finds that:

- (1) A mining industry is essential to the economic and physical well-being of the state of Utah and the nation.
- (2) It is necessary to alter the surface of the earth to extract minerals required by our society, but this should be done in such a way as to minimize undesirable effects on the surroundings.
- (3) Mined land should be reclaimed so as to prevent conditions detrimental to the general safety and welfare of the citizens of the state and to provide for the subsequent use of the lands affected. Reclamation requirements must be adapted to the diversity of topographic, chemical, climatic, biologic, geologic, economic, and social conditions in the areas where mining takes place.

Enacted by Chapter 130, 1975 General Session

40-8-3 Purpose.

The purpose of this act is to provide that from the effective date of the act, except as otherwise provided in this act, all mining in the state shall include plans for reclamation of the land affected.

Enacted by Chapter 130, 1975 General Session

40-8-4 Definitions.

As used in this chapter:

- (1) "Adjudicative proceeding" means:
 - (a) a division or board action or proceeding determining the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, permit, or license; or
 - (b) judicial review of a division or board action or proceeding specified in Subsection (1)(a).

- (2) "Applicant" means a person who has filed a notice of intent to commence mining operations, or who has applied to the board for a review of a notice or order.
- (3)
 - (a) "Approved notice of intention" means a formally filed notice of intention to commence mining operations, including revisions to it, which has been approved under Section 40-8-13.
 - (b) An approved notice of intention is not required for small mining operations.
- (4) "Board" means the Board of Oil, Gas, and Mining.
- (5) "Conference" means an informal adjudicative proceeding conducted by the division or board.
- (6)
 - (a) "Deposit" or "mineral deposit" means an accumulation of mineral matter in the form of consolidated rock, unconsolidated material, solutions, or occurring on the surface, beneath the surface, or in the waters of the land from which any product useful to man may be produced, extracted, or obtained or which is extracted by underground mining methods for underground storage.
 - (b) "Deposit" or "mineral deposit" excludes sand, gravel, rock aggregate, water, geothermal steam, and oil and gas as defined in Title 40, Chapter 6, Board and Division of Oil, Gas, and Mining, but includes oil shale and bituminous sands extracted by mining operations.
- (7) "Development" means the work performed in relation to a deposit following its discovery but prior to and in contemplation of production mining operations, aimed at, but not limited to, preparing the site for mining operations, defining further the ore deposit by drilling or other means, conducting pilot plant operations, constructing roads or ancillary facilities, and other related activities.
- (8) "Division" means the Division of Oil, Gas, and Mining.
- (9) "Emergency order" means an order issued by the board in accordance with the provisions of Title 63G, Chapter 4, Administrative Procedures Act.
- (10)
 - (a) "Exploration" means surface-disturbing activities conducted for the purpose of discovering a deposit or mineral deposit, delineating the boundaries of a deposit or mineral deposit, and identifying regions or specific areas in which deposits or mineral deposits are most likely to exist.
 - (b) "Exploration" includes, but is not limited to: sinking shafts; tunneling; drilling holes and digging pits or cuts; building of roads, and other access ways; and constructing and operating other facilities related to these activities.
- (11) "Hearing" means a formal adjudicative proceeding conducted by the board under its procedural rules.
- (12)
 - (a) "Imminent danger to the health and safety of the public" means the existence of a condition or practice, or a violation of a permit requirement or other requirement of this chapter in a mining operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated.
 - (b) A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement.
- (13)
 - (a) "Land affected" means the surface and subsurface of an area within the state where mining operations are being or will be conducted, including, but not limited to:
 - (i) on-site private ways, roads, and railroads;

- (ii) land excavations;
 - (iii) exploration sites;
 - (iv) drill sites or workings;
 - (v) refuse banks or spoil piles;
 - (vi) evaporation or settling ponds;
 - (vii) stockpiles;
 - (viii) leaching dumps;
 - (ix) placer areas;
 - (x) tailings ponds or dumps; and
 - (xi) work, parking, storage, or waste discharge areas, structures, and facilities.
- (b) All lands shall be excluded from the provisions of Subsection (13)(a) that would:
- (i) be includable as land affected, but which have been reclaimed in accordance with an approved plan, as may be approved by the board; and
 - (ii) lands in which mining operations have ceased prior to July 1, 1977.
- (14)
- (a) "Mining operation" means activities conducted on the surface of the land for the exploration for, development of, or extraction of a mineral deposit, including, but not limited to, surface mining and the surface effects of underground and in situ mining, on-site transportation, concentrating, milling, evaporation, and other primary processing.
- (b) "Mining operation" does not include:
- (i) the extraction of sand, gravel, and rock aggregate;
 - (ii) the extraction of oil and gas as defined in Title 40, Chapter 6, Board and Division of Oil, Gas, and Mining;
 - (iii) the extraction of geothermal steam;
 - (iv) smelting or refining operations;
 - (v) off-site operations and transportation;
 - (vi) reconnaissance activities; or
 - (vii) activities which will not cause significant surface resource disturbance or involve the use of mechanized earth-moving equipment, such as bulldozers or backhoes.
- (15) "Notice" means:
- (a) notice of intention, as defined in this chapter; or
 - (b) written information given to an operator by the division describing compliance conditions at a mining operation.
- (16) "Notice of intention" means a notice to commence mining operations, including revisions to the notice.
- (17) "Off-site" means the land areas that are outside of or beyond the on-site land.
- (18)
- (a) "On-site" means the surface lands on or under which surface or underground mining operations are conducted.
- (b) A series of related properties under the control of a single operator, but separated by small parcels of land controlled by others, will be considered to be a single site unless an exception is made by the division.
- (19) "Operator" means a natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative, either public or private, owning, controlling, or managing a mining operation or proposed mining operation.
- (20) "Order" means written information provided by the division or board to an operator or other parties, describing the compliance status of a permit or mining operation.

- (21) "Owner" means a natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative, either public or private, owning, controlling, or managing a mineral deposit or the surface of lands employed in mining operations.
- (22) "Permit area" means the area of land indicated on the approved map submitted by the operator with the application or notice to conduct mining operations.
- (23) "Permit" means a permit or notice to conduct mining operations issued by the division.
- (24) "Permittee" means a person holding, or who is required by Utah law to hold, a valid permit or notice to conduct mining operations.
- (25) "Person" means an individual, partnership, association, society, joint stock company, firm, company, corporation, or other governmental or business organization.
- (26) "Reclamation" means actions performed during or after mining operations to shape, stabilize, revegetate, or treat the land affected in order to achieve a safe, stable, ecological condition and use which will be consistent with local environmental conditions.
- (27) "Small mining operations" means mining operations that disturb or will disturb 10 or less surface acres at any given time in an unincorporated area of a county or five or less surface acres at any given time in an incorporated area of a county.
- (28) "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of a violation of the permit or a requirement of this chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate a violation of the permit or this chapter due to indifference, lack of diligence, or lack of reasonable care.

Amended by Chapter 231, 2011 General Session

40-8-5 Authority to enforce chapter -- Coordination of procedures -- Department of Environmental Quality.

- (1)
 - (a) The board and the division have jurisdiction and authority over all persons and property, both public and private, necessary to enforce this chapter.
 - (b) The delegation of authority to a state officer, board, division, commission, or agency to administer a law of this state relating to mined land reclamation is withdrawn and the authority is unqualifiedly conferred upon the board and division as provided in this chapter.
 - (c) Nothing in this chapter affects the right of a landowner, or a public agency having proprietary authority under other provisions of law, to administer lands within the state, to include conditions in a lease, license, bill of sale, deed, right-of-way, permit, contract, or other instrument, if the conditions are consistent with this chapter and the rules adopted under this chapter.
- (2)
 - (a) If federal or local laws or regulations require operators to comply with mined land reclamation procedures separate from those provided for in this chapter, the board and division shall make every effort to have its rules and procedures accepted by the other governing bodies as complying with their respective requirements.
 - (b) The provisions of Subsections (2)(a) and (d) are established to minimize the need for operators and prospective operators to comply with duplicative, overlapping, or conflicting requirements.
 - (c) Nothing in this chapter authorizes a political subdivision of the state to impose a condition or restriction on a mining operation located on state or federal land that is not imposed by a federal or state agency on the mining operation.

- (d) An ordinance or regulation issued by a political subdivision of the state that is more restrictive than a permit issued under this chapter for a mining operation on state or federal land is unenforceable.
- (3) Nothing in this chapter is intended to abrogate or interfere with the powers or duties of the Department of Environmental Quality.

Amended by Chapter 182, 2011 General Session

40-8-6 Board -- Powers, functions, and duties.

In addition to those provided in Title 40, Chapter 6, Board and Division of Oil, Gas, and Mining, the board has the following powers, functions, and duties:

- (1) To enact rules according to the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that are reasonably necessary to carry out the purposes of this chapter.
- (2) To hold hearings and to issue orders or other appropriate instruments based upon the results of those hearings.
- (3) To issue emergency orders according to the requirements and provisions of Title 63G, Chapter 4, Administrative Procedures Act.
- (4) To do all other things and take such other actions within the purposes of this act as may be necessary to enforce its provisions.

Amended by Chapter 344, 2009 General Session

40-8-7 Board and division -- Authority.

- (1) The board and the division may require:
 - (a) that a notice of intention for all mining operations be filed with, and approved by, the division, before the mining operation commences or continues pursuant to Sections 40-8-13 and 40-8-23;
 - (b) the reclamation of lands affected by mining operations after the effective date of this chapter having due regard for innate differences in mineral deposits;
 - (c) for mining operations, including small mining operations, the furnishing and maintenance of reasonable surety to guarantee that the land affected is reclaimed according to approved plans consistent with on-site conditions;
 - (d) that the operator rehabilitate, close, or mitigate the impacts of each drill hole, shaft, or tunnel as required under Section 40-8-13;
 - (e) that the operator pay legally determined public liability and property damage claims resulting from mining operations;
 - (f) that every operator who conducts mining operations in the state maintain suitable records and make periodic reports to the division as required under this chapter;
 - (g) that with respect to all mining operations, a notice of intention is filed with and, if required by this chapter, approved by the division before any such mining operations are commenced or continued pursuant to Section 40-8-23;
 - (h) the suspension of mining operations in an emergency situation;
 - (i) the payment of fixed, uniform, and nonescalating permit fees; or
 - (j) that mining operations be conducted to minimize or prevent hazards to public health and safety.

- (2) No rule established by the board with respect to mined land reclamation shall have retroactive effect on existing reclamation plans included as a part of an approved notice of intention to commence mining operations which was approved prior to the effective date of the rule.
- (3) The board may promulgate rules relating to the surety for mining operations in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Amended by Chapter 382, 2008 General Session

40-8-8 Board authority to act -- Entry of order -- Confidential data.

- (1) The board may:
 - (a) file a notice of agency action; or
 - (b) respond to a request for agency action initiated by an affected person.
- (2)
 - (a) The board shall enter its order within 60 days after the hearing.
 - (b) All orders entered by the board shall be:
 - (i) entered in books to be kept by the board for that purpose;
 - (ii) indexed; and
 - (iii) public records open for inspection at all times during reasonable office hours.
 - (c) Confidential data disclosed under this chapter shall be protected and not become public records, except as provided in Section 40-8-13.

Amended by Chapter 388, 2009 General Session

40-8-9 Evasion of chapter or orders -- Penalties -- Limitations of actions -- Violation of chapter or permit conditions -- Inspection -- Cessation order, abatement notice, or show cause order -- Suspension or revocation of permit -- Review -- Division enforcement authority -- Appeal provisions.

- (1)
 - (a) A person, owner, or operator who willfully or knowingly evades this chapter, or who for the purpose of evading this chapter or any order issued under this chapter, willfully or knowingly makes or causes to be made any false entry in any report, record, account, or memorandum required by this chapter, or by the order, or who willfully or knowingly omits or causes to be omitted from a report, record, account, or memorandum, full, true, and correct entries as required by this chapter, or by the order, or who willfully or knowingly removes from this state or destroys, mutilates, alters, or falsifies any record, account, or memorandum, is guilty of a class B misdemeanor and, upon conviction, is subject to a fine of not more than \$10,000 for each violation.
 - (b) Each day of willful failure to comply with an emergency order is a separate violation.
- (2) No suit, action, or other proceeding based upon a violation of this chapter, or any rule or order issued under this chapter, may be commenced or maintained unless the suit, action, or proceeding is commenced within five years from the date of the alleged violation.
- (3)
 - (a) If, on the basis of information available, the division has reason to believe that a person is in violation of a requirement of this chapter or a permit condition required by this chapter, the division shall immediately order inspection of the mining operation at which the alleged violation is occurring, unless the information available to the division is a result of a previous inspection of the mining operation.
 - (b)

- (i) If, on the basis of an inspection, the division determines that a condition or practice exists, or that a permittee is in violation of a requirement of this chapter or a permit condition required by this chapter, and the condition, practice, or violation also creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the division shall immediately order a cessation of mining and operations or the portion relevant to the condition, practice, or violation.
 - (ii) The cessation order shall remain in effect until the division determines that the condition, practice, or violation has been abated, or until modified, vacated, or terminated by the division.
 - (iii) If the division finds that the ordered cessation of mining operations, or a portion of the operation, will not completely abate the imminent danger to the health or safety of the public or the significant imminent environmental harm to land, air, or water resources, the division shall, in addition to the cessation order, impose affirmative obligations on the operator requiring him to take whatever steps the division considers necessary to abate the imminent danger or the significant environmental harm.
 - (c)
 - (i) If, on the basis of an inspection, the division determines that a permittee is in violation of a requirement of this chapter or a permit condition required by this chapter, but the violation does not create an imminent danger to the health or safety of the public or cannot be reasonably expected to cause significant, imminent environmental harm to land, air, or water resources, the division shall issue a notice to the permittee or his agent specifying a reasonable time, but not more than 90 days, for the abatement of the violation and providing an opportunity for a conference with the division.
 - (ii) If, upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown, and upon the written finding of the division, the division finds that the violation has not been abated, it shall immediately order a cessation of mining operations or the portion of the mining operation relevant to the violation.
 - (iii) The cessation order shall remain in effect until the division determines that the violation has been abated or until modified, vacated, or terminated by the division pursuant to this Subsection (3).
 - (iv) In the order of cessation issued by the division under this Subsection (3), the division shall determine the steps necessary to abate the violation in the most expeditious manner possible and shall include the necessary measures in the order.
 - (d)
 - (i) Notices and orders issued under this section shall set forth with reasonable specificity:
 - (A) the nature of the violation and the remedial action required;
 - (B) the period of time established for abatement; and
 - (C) a reasonable description of the portion of the mining and reclamation operation to which the notice or order applies.
 - (ii) Each notice or order issued under this section shall be given promptly to the permittee or his agent by the division, and the notices and orders shall be in writing and shall be signed by the director, or his authorized representative who issues notices or orders.
 - (iii) A notice or order issued under this section may be modified, vacated, or terminated by the division, but any notice or order issued under this section which requires cessation of mining by the operator shall expire within 30 days of the actual notice to the operator, unless a conference is held with the division.
- (4)

- (a) The division may request the attorney general to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court for the district in which the mining and reclamation operation is located, or in which the permittee of the operation has his principal office, if the permittee or his agent:
 - (i) violates or fails or refuses to comply with an order or decision issued by the division under this chapter;
 - (ii) interferes with, hinders, or delays the division, or its authorized representatives, in carrying out the provisions of this chapter;
 - (iii) refuses to admit the authorized representatives to the mine;
 - (iv) refuses to permit inspection of the mine by the authorized representative; or
 - (v) refuses to furnish any information or report requested by the division in furtherance of the provisions of this chapter.
- (b)
 - (i) The court shall have jurisdiction to provide the appropriate relief.
 - (ii) Relief granted by the court to enforce an order under Subsection (4)(a)(i) shall continue in effect until the completion or final termination of all proceedings for review of that order under this chapter, unless, prior to this completion or termination, the district court granting the relief sets it aside or modifies the order.
- (5)
 - (a)
 - (i) A permittee issued a notice or order by the division, pursuant to the provisions of Subsections (3)(b) and (3)(c), or a person having an interest which may be adversely affected by the notice or order, may apply to the board for review of the notice or order within 30 days of receipt of the notice or order, or within 30 days of a modification, vacation, or termination of the notice or order.
 - (ii) Upon receipt of this application, the board shall pursue an investigation as it considers appropriate.
 - (iii) The investigation shall provide an opportunity for a public hearing at the request of the applicant or the person having an interest which is or may be adversely affected, to enable the applicant or that person to present information relating to the issuance and continuance of the notice or order of the modification, vacation, or termination of the notice or order.
 - (iv) The filing of an application for review under this Subsection (5)(a) shall not operate as a stay of an order or notice.
 - (b)
 - (i) The permittee and other interested persons shall be given written notice of the time and place of the hearing at least five days prior to the hearing.
 - (ii) This hearing shall be of record and shall be subject to judicial review.
 - (c)
 - (i) Pending completion of the investigation and hearing required by this section, the applicant may file with the board a written request that the board grant temporary relief from any notice or order issued under this section, with a detailed statement giving the reasons for granting this relief.
 - (ii) The board shall issue an order or decision granting or denying this relief expeditiously.
 - (d)
 - (i) Following the issuance of an order to show cause as to why a permit should not be suspended or revoked pursuant to this section, the board shall hold a public hearing, after giving written notice of the time, place, and date of the hearing.
 - (ii) The hearing shall be of record and shall be subject to judicial review.

- (iii) Within 60 days following the public hearing, the board shall issue and furnish to the permittee and all other parties to the hearing, a written decision, and the reasons for the decision, regarding suspension or revocation of the permit.
- (iv) If the board revokes the permit, the permittee shall immediately cease mining operations on the permit area and shall complete reclamation within a period specified by the board, or the board shall declare the performance bonds forfeited for the operation.
- (e) Action by the board taken under this section or any other provision of the state program shall be subject to judicial review by the appropriate district court within the state.
- (6) A criminal proceeding for a violation of this chapter, or a regulation or order issued under this chapter, shall be commenced within five years from the date of the alleged violation.

Amended by Chapter 322, 2007 General Session

40-8-9.1 Civil penalty for violation of chapter -- Informal conference -- Public hearing -- Contest of violation or amount of penalty -- Collection -- Criminal penalties -- Civil penalty for failure to correct violation -- Civil penalties.

- (1)
 - (a)
 - (i) A permittee who violates a permit condition or other provision of this chapter, may be assessed a civil penalty by the division.
 - (ii) If the violation leads to the issuance of a cessation order under Section 40-8-9(3), the civil penalty shall be assessed.
 - (b)
 - (i) The penalty may not exceed \$5,000 for each violation.
 - (ii) Each day of a continuing violation may be considered to be a separate violation for purposes of the penalty assessments.
 - (c) In determining the amount of the penalty, consideration shall be given to:
 - (i) the permittee's history of previous violations at the particular mining operation;
 - (ii) the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public;
 - (iii) whether the permittee was negligent; and
 - (iv) the demonstrated good faith of the permittee in attempting to achieve rapid compliance after notification of the violation.
- (2)
 - (a) Within 30 days after the issuance of a notice or order charging that a violation of this chapter has occurred, the division shall inform the permittee of the proposed assessment.
 - (b) The person charged with the penalty shall then have 30 days to pay the proposed assessment in full, or request an informal conference with the division.
 - (c) The informal conference held by the division may address either the amount of the proposed assessment or the fact of the violation, or both.
 - (d) If the permittee who requested the informal conference and participated in the proceedings is not in agreement with the results of the informal conference, the permittee may, within 30 days of receipt of the decision made by the division in the informal conference, request a hearing before the board.
 - (e)
 - (i) Prior to any review of the proposed assessment or the fact of a violation by the board, and within 30 days of receipt of the decision made by the division in the informal conference,

the permittee shall forward to the division the amount of the proposed assessment for placement in an escrow account.

- (ii) If the permittee fails to forward the amount of the penalty to the division within 30 days of receipt of the results of the informal conference, the operator waives any opportunity for further review of the fact of the violation or to contest the amount of the civil penalty assessed for the violation.
 - (iii) If, through administrative or judicial review, it is determined that no violation occurred or that the amount of the penalty should be reduced, the division shall, within 30 days, remit the appropriate amount to the operator with interest accumulated.
- (3)
- (a) A civil penalty assessed by the division shall be final only after the person charged with a violation described under Subsection (1) has been given an opportunity for a public hearing.
 - (b) If a public hearing is held, the board shall make findings of fact and shall issue a written decision as to the occurrence of the violation and the amount of the penalty which is warranted, incorporating, when appropriate, an order requiring that the penalty be paid.
 - (c) When appropriate, the board shall consolidate the hearings with other proceedings under Section 40-8-9.
 - (d) A hearing under this section shall be of record and shall be conducted pursuant to board rules governing the proceedings.
 - (e) If the person charged with a violation does not attend the public hearing, a civil penalty shall be assessed by the division after the division:
 - (i) has determined:
 - (A) that a violation did occur; and
 - (B) the amount of the penalty which is warranted; and
 - (ii) has issued an order requiring that the penalty be paid.
 - (4) Civil penalties owed under this chapter may be recovered in a civil action brought by the attorney general of Utah at the request of the board in any appropriate district court of the state.
 - (5) Any person who willfully and knowingly violates a condition of a permit issued pursuant to this chapter or fails or refuses to comply with an order issued under Section 40-8-9, or any order incorporated in a final decision issued by the board under this chapter, except an order incorporated in a decision under Subsection (3), shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year, or both.
 - (6) Whenever a corporate permittee violates a condition of a permit issued pursuant to this chapter or fails or refuses to comply with any order incorporated in a final decision issued by the board under this chapter, except an order incorporated in a decision issued under Subsection (3), a director, officer, or agent of the corporation who willfully and knowingly authorized, ordered, or carried out the violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under Subsections (1) and (5).
 - (7) Any person who knowingly makes a false statement, representation, or certification, or knowingly fails to make a statement, representation, or certification in an application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter or an order or decision issued by the board under this chapter shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year, or both.
- (8)
- (a) An operator who fails to correct a violation for which a notice or cessation order has been issued under Subsection 40-8-9(3)(b) within the period permitted for a correction of the violation shall be assessed a civil penalty of not less than \$750 for each day during which the failure or violation continues.

- (b) The period permitted for correction of a violation for which a notice of cessation order has been issued under Subsection 40-8-9(3)(b) may not end until:
 - (i) the entry of a final order by the board, in a review proceeding initiated by the operator, in which the board orders, after an expedited hearing, the suspension of the abatement requirements of the citation after determining that the operator will suffer irreparable loss or damage from the application of those requirements; or
 - (ii) the entry of an order of the court, a review proceeding initiated by the operator, in which the court orders the suspension of the abatement requirements of the citation.
- (9) Money received by the state from civil penalties collected from actions resulting from this chapter shall be deposited into the division's Abandoned Mine Reclamation Fund as established under Section 40-10-25.1 and shall be used for the reclamation of mined land impacts not covered by reclamation bonds.

Enacted by Chapter 194, 2002 General Session

40-8-10 Notice.

Except as otherwise provided in this chapter, any notification required by this chapter shall be:

- (1) given by the board or division by personal service to individuals directly affected; and
 - (a) by one publication in a daily newspaper of general circulation in Salt Lake City, Utah; and
 - (b) in all newspapers of general circulation published in the county or counties in which the land affected is situated; and
- (2) by publication in accordance with Section 45-1-101.

Amended by Chapter 388, 2009 General Session

40-8-11 Budget of administrative expenses -- Procedure -- Division authority to appoint or employ consultants.

- (1) The division, with the approval of the board, shall prepare a budget of the administrative expenses in carrying out the provisions of this act for the fiscal year next following the convening of the Legislature. This budget shall be submitted to the executive director of the Department of Natural Resources for inclusion in the governor's appropriation request to the Legislature.
- (2) The division shall have authority to appoint or employ technical support or consultants in the pursuit of the objectives of this act and shall be responsible for coordination with other agencies in matters relating to mined land reclamation and the application of related laws.

Amended by Chapter 201, 1983 General Session

40-8-12 Objectives.

The objectives of mined land reclamation are:

- (1) to return the land, concurrently with mining or within a reasonable amount of time thereafter, to a stable ecological condition compatible with past, present, and probable future local land uses;
- (2) to minimize or prevent present and future on-site or off-site environmental degradation caused by mining operations to the ecologic and hydrologic regimes and to meet other pertinent state and federal regulations regarding air and water quality standards and health and safety criteria; and
- (3) to minimize or prevent future hazards to public safety and welfare.

Amended by Chapter 147, 1987 General Session

40-8-12.5 Reclamation required.

Every operator shall be obligated to conduct reclamation and shall be responsible for the costs and expenses thereof.

Enacted by Chapter 147, 1987 General Session

40-8-13 Notice of intention required prior to mining operations -- Assurance of reclamation required in notice of intention -- When contents confidential -- Approval of notice of intention not required for small mining operations -- Procedure for reviewing notice of intention.

- (1)
 - (a) Before any operator begins mining operations, or continues mining operations pursuant to Section 40-8-23, the operator shall file a notice of intention for each individual mining operation with the division.
 - (b) The notice of intention referred to in Subsection (1)(a) shall include:
 - (i) identification of all owners of any interest in a mineral deposit, including any ownership interest in surface land affected by the notice;
 - (ii) copies of underground and surface mine maps;
 - (iii) locations of drill holes;
 - (iv) accurate area maps of existing and proposed operations; and
 - (v) information regarding the amount of material extracted, moved, or proposed to be moved, relating to the mining operation.
 - (c) The notice of intention for small mining operations shall include a statement that the operator shall conduct reclamation as required by rules promulgated by the board.
 - (d) The notice of intention for mining operations, other than small mining operations, shall include a plan for reclamation of the lands affected as required by rules promulgated by the board.
- (2) The division may require that the operator rehabilitate, close, or mitigate the impacts of each drill hole, shaft, or tunnel when no longer needed as part of the mining operation.
- (3) Information provided in the notice of intention, and its attachments relating to the location, size, or nature of the deposit that is marked confidential by the operator shall be protected as confidential information by the board and the division and is not a matter of public record unless the board or division obtains a written release from the operator, or until the mining operation has been terminated as provided in Subsection 40-8-21(2).
- (4)
 - (a) Within 30 days from the receipt of a notice of intention, the division shall complete its review of the notice and shall make further inquiries, inspections, or examinations that are necessary to properly evaluate the notice.
 - (b) The division shall notify the operator of any objections to the notice and shall grant the operator a reasonable opportunity to take action that may be required to remove the objections or obtain a ruling relative to the objections from the board.
- (5) Except for the form and amount of surety, an approval of a notice of intention for small mining operations is not required.
- (6) The notice of intention for mining operations other than small mining operations, shall be reviewed as provided in this Subsection (6).

- (a) Within 30 days after receipt of a notice of intention or within 30 days following the last action of the operator or the division on the notice of intention, the division shall make a tentative decision to approve or disapprove the notice of intention.
- (b) The division shall:
 - (i) mail the information relating to the land affected and the tentative decision to the operator; and
 - (ii) publish the information and the decision, in abbreviated form:
 - (A) one time only, in all newspapers of general circulation published in the county where the land affected is situated;
 - (B) in a daily newspaper of general circulation in Salt Lake City, Utah; and
 - (C) as required in Section 45-1-101.
- (c) The division shall also mail a copy of the abbreviated information and tentative decision to the zoning authority of the county in which the land affected is situated and to the owner of record of the land affected.
- (d)
 - (i) Any person or agency aggrieved by the tentative decision may file a request for agency action with the division.
 - (ii) If no requests for agency action are received by the division within 30 days after the last date of publication, the tentative decision on the notice of intention is final and the division shall notify the operator.
 - (iii) If written objections of substance are received, the division shall hold an informal adjudicative proceeding.
- (e) This Subsection (6) does not apply to exploration.
- (7) Within 30 days after receipt of a notice of intention concerning exploration operations other than small mining operations, the division will review the notice of intention and approve or disapprove it.

Amended by Chapter 243, 2013 General Session

40-8-14 Surety requirement -- Liability of small mining operations for failure to reclaim -- Forfeiture of surety.

- (1)
 - (a) After receiving notification that a notice of intention for mining operations has been approved, but prior to commencement of those operations, the operator shall provide surety to the division, in a form and amount determined by the division or board as provided in this section.
 - (b) In determining the amount of surety under this section, the division may use the average cost of reclamation per acre.
 - (c) The board shall annually establish a figure representing the average cost of reclamation per acre after receiving a presentation from the division concerning the average cost of reclamation per acre and providing opportunity for public comment.
- (2)
 - (a) Except as provided in Subsection (3), the division shall approve the amount and form of surety.
 - (b) In determining the amount of surety to be provided, the division shall consider:
 - (i) the magnitude, type, and costs of approved reclamation activities planned for the land affected; and
 - (ii) the nature, extent, and duration of operations under the approved notice.

- (c) The division shall approve a fixed amount estimated to be required to complete reclamation at any point in time covered by the notice of intent.
- (d)
 - (i) The division shall determine the amount of surety required for notices of intention, by using cost data from current large mining sureties.
 - (ii) The costs shall be adjusted to reflect the nature and scope of activities in the affirmative statement filed under Subsection 40-8-18(4).
- (e)
 - (i) In determining the form of surety to be provided by the operator, the division shall approve a method acceptable to the operator consistent with the requirements of this chapter.
 - (ii) The form of surety that the operator may provide includes, but is not limited to, the following:
 - (A) collateral;
 - (B) a bond or other form of insured guarantee;
 - (C) deposited securities; or
 - (D) cash.
- (3)
 - (a) If the operator proposes reclamation surety in the form of a written contractual agreement, the board shall approve the form of surety.
 - (b) In making this decision, the board shall consider:
 - (i) the operator's:
 - (A) financial status;
 - (B) assets within the state;
 - (C) past performance in complying with contractual agreements; and
 - (D) facilities available to carry out the planned work;
 - (ii) the magnitude, type, and costs of approved reclamation activities planned for the land affected; and
 - (iii) the nature, extent, and duration of operations under the approved notice.
- (4) In determining the amount and form of surety to be provided under this section, consideration shall be given to similar requirements made on the operator by landowners, governmental agencies, or others, with the intent that surety requirements shall be coordinated and not duplicated.
- (5) The liability under surety provisions shall continue until liability, in part, or in its entirety, is released by the division.
- (6)
 - (a) If the operator of a mining operation, including a small mining operation, fails or refuses to carry out the necessary land reclamation as outlined in the approved notice of intention, the board may, after notice and hearing, declare any surety filed for this purpose forfeited.
 - (b) With respect to the surety filed with the division, the board shall request the attorney general to take the necessary legal action to enforce and collect the amount of liability.
 - (c) If surety or a bond has been filed with the Division of Forestry, Fire, and State Lands, the School and Institutional Trust Lands Administration, or any agency of the federal government, the board shall certify a copy of the transcript of the hearing and transmit it to the agency together with a request that the necessary forfeiture action be taken.
 - (d) The forfeited surety shall be used only for the reclamation of the land to which it relates, and any residual amount returned to the rightful claimant.

Amended by Chapter 125, 2011 General Session

40-8-15 Notice of commencement to division -- Operations and progress report.

- (1) Within 30 days after commencement of mining operations under an approved notice of intention, the operator shall give notice of such commencement to the division.
- (2) At the end of each calendar year, unless waived by the division, each operator conducting mining operations under an approved notice of intention shall file an operations and progress report with the division on a form prescribed in the rules promulgated by the board.

Amended by Chapter 147, 1987 General Session

40-8-16 Approved notice of intention valid for life of operation -- Withdrawal, withholding, or refusal of approval -- Procedure and basis.

- (1) An approved notice of intention or approved revision of it remains valid for the life of the mining operation, as stated in it, unless the board withdraws the approval as provided in Subsection (2).
- (2) The board or the division shall not withdraw approval of a notice of intention or revision of it, except as follows:
 - (a) Approval may be withdrawn in the event that the operator substantially fails to perform reclamation or conduct mining operations so that the approved reclamation plan can be accomplished.
 - (b) Approval may be withdrawn in the event that the operator fails to provide and maintain surety as may be required under this chapter.
 - (c) Approval may be withdrawn in the event that mining operations are continuously shut down for a period in excess of five years, unless the extended period is accepted upon application of the operator.
- (3) Approval of a notice of intention may not be refused, withheld, nor withdrawn by the division until the operator, who holds or has applied for such approval, has had an opportunity to request a hearing before the board, present evidence, cross-examine, and participate fully in the proceedings. Based on the record of the hearing, the board will issue an order concerning the refusal, withholding, or withdrawal of the notice of intention. If no hearing is requested, the division may refuse, withhold, or withdraw approval of a notice of intention.
- (4) In the event that the division or the board withdraws approval of a notice of intention or its revision, all mining operations included under the notice shall be suspended in accordance with procedures and schedule approved by the division.

Amended by Chapter 22, 1989 General Session

40-8-17 Responsibility of operator to comply with applicable rules, regulations and ordinances -- Inspections.

- (1) The approval of a notice of intention shall not relieve the operator from responsibility to comply with all other applicable statutes, rules, regulations, and ordinances, including but not limited to, those applying to safety, air and water pollution, and public liability and property damage.
- (2) As a condition of consideration and approval of a notice of intention, each applicant or operator under a notice of intention shall permit members of the board, the division, or other state agency having lawful interest in the administration of this act, to have the right, at all reasonable times, to enter the affected land and all related properties included in the notice of intention, whether or not approved, to make inspections for the purposes of this act.

Enacted by Chapter 130, 1975 General Session

40-8-18 Notice of intention to revise operations -- Procedure.

- (1)
 - (a) Since mining operations and related reclamation plans may need to be revised to accommodate changing conditions or new technology, an operator conducting mining operations under an approved notice of intention shall submit to the division a notice of intention when revising mining operations.
 - (b) The notice of intention to revise mining operations shall be submitted in the form required by the rules promulgated by the board.
- (2)
 - (a) The notice of intention to revise mining operations will be designated as an amendment to the existing notice of intention by the division, based on rules promulgated by the board.
 - (b) An amendment of a notice of intention will be reviewed and considered for approval or disapproval by the division within 30 days of receipt of a notice of intention to revise mining operations.
- (3)
 - (a) A notice of intention to revise mining operations, if not designated as an amendment of a notice of intention as set forth in Subsection (2), shall be processed and considered for approval by the division in the same manner and within the same time period as an original notice of intention.
 - (b) The operator shall be authorized and bound by the requirements of the existing notice until the revision is acted upon and any revised surety requirements are established and satisfied.
- (4)
 - (a) If a change in the operation occurs, a mining operation representative shall submit an amendment to the notice of intention.
 - (b) Although approval of an amendment to the notice of intention by small mining operations is not required, a revised surety shall be filed by the permittee prior to implementing the amended notice of intention.

Amended by Chapter 35, 2003 General Session

40-8-19 Transfer of mining operation under approved notice of intention.

Whenever an operator succeeds to the interest of another operator who holds an approved notice of intention or revision covering a mining operation, by sale, assignment, lease, or other means, the division may release the first operator from his responsibilities under his approved notice of intention, including surety, provided the successor assumes all of the duties of the former operator, to the satisfaction of the division, under this approved notice of intention, including its then approved reclamation plan and the posting of surety. Upon the satisfactory assumption of such responsibilities by the successor operator, under conditions approved by the division, the approved notice of intention shall be transferred to the successor operator.

Enacted by Chapter 130, 1975 General Session

40-8-20 Applicability.

This act shall apply to all lands in the state of Utah lawfully subject to its police power. No political subdivision of this state shall enact laws, regulations, or ordinances which are inconsistent with this act.

Enacted by Chapter 130, 1975 General Session

40-8-21 Temporary suspension or termination of operations -- Notice to division -- Evaluation and inspection -- Release of surety -- Evidence of compliance.

- (1) In the case of a temporary suspension of mining operations, excluding labor disputes, expected to be in excess of five years' duration, the operator shall, within 30 days, notify the division.
- (2) In the case of a termination of mining operations or a suspension of such operations expected to extend for a period in excess of two years, the operator shall furnish the division with such data as it may require in order to evaluate the status of the mining operation, performance under the reclamation plan, and the probable future status of the mineral deposit and condition of the land affected.
- (3) Upon receipt of notification of termination or extended suspension, the division shall, within 30 days, cause an inspection to be made of the property and take whatever action may be appropriate in furtherance of the purposes of this chapter.
- (4) The full release by the division of surety posted under an approved notice of intention shall be prima facie evidence that the operator has fully complied with the provisions of this chapter.

Amended by Chapter 147, 1987 General Session

40-8-22 Division cooperation -- Agreements.

- (1) The division shall cooperate with other state agencies, local governmental bodies, agencies of the federal government, and appropriate private interest in the furtherance of the purposes of this act.
- (2) The division is authorized to enter into cooperative agreements with these agencies, as may be approved by the board, in furtherance of the purposes of this act and may accept or commit funds in connection thereto as may be appropriated or otherwise provided for the purpose and as specifically approved by the board, except that such actions shall not result in any delegation of powers, responsibility, or authority conferred upon the board or division by this act.

Enacted by Chapter 130, 1975 General Session

40-8-23 Effective dates -- Exceptions.

This act shall become effective 60 days after adjournment of the Legislature except as follows:

- (1) Mining operations which are active on the effective date of this act will be required to prepare and submit a notice of intention on or before July 1, 1977, and shall be authorized to continue such existing operations until the operator obtains approval of his notice of intention. Such approval shall be obtained by the operator within 36 months from the date of submission of this notice. Subsequent to approval of the notice of intention, the operator shall be bound by the provisions of the approved notice of intention and surety requirements as provided in Sections 40-8-13 and 40-8-14.
- (2) Mining operations which are active on the effective date of this act and which are suspended or terminated on or before July 1, 1977, shall advise the division of this fact before July 10, 1977, and shall not be required to submit a notice of intention.
- (3) Mining operations which are inactive on the effective date of this act and which resume operations on or before July 1, 1977, shall be required to prepare and submit a notice of intention within 12 months following the effective date of this act or within six months of the resumption of such operations, whichever is earlier, and shall be authorized to conduct operations as described in the notice of intention until the operator obtains approval of his

notice of intention. Such approval shall be obtained by the operator within 36 months from the date of submission of the notice. Subsequent to approval of the notice of intention the operator shall be bound by the provisions of the approved notice of intention and surety requirements as provided in Sections 40-8-13 and 40-8-14.

- (4) The board and division, in the initial application of this act and until July 1, 1977, shall not be bound by the 30 day time limitation within which to take action on a notice of intention; but all notices of intention filed before July 1, 1977, shall be acknowledged as received within 30 days of receipt and action shall be commenced by the division within 12 months from the date of receipt.
- (5) This act and the rules and regulations promulgated under it shall be fully effective for all operators and mining operations active on the effective date of this act or commenced or reactivated on and after July 1, 1977.

Amended by Chapter 20, 1995 General Session

Chapter 9

Interstate Mining Compact

40-9-101 Title.

This chapter is known as "Interstate Mining Compact."

Enacted by Chapter 459, 2013 General Session

40-9-102 Text of compact.

The Interstate Mining Compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

Article I

Findings and Purposes

- (1) The party States find that:
 - (a) Mining and the contributions thereof to the economy and well-being of every State are of basic significance.
 - (b) The effects of mining on the availability of land, water and other resources for other uses present special problems which properly can be approached only with due consideration for the rights and interests of those engaged in mining, those using or proposing to use these resources for other purposes, and the public.
 - (c) Measures for the reduction of the adverse effects of mining on land, water and other resources may be costly and the devising of means to deal with them are of both public and private concern.
 - (d) Such variables as soil structure and composition, physiography, climatic conditions, and the needs of the public make impracticable the application to all mining areas of a single standard for the conservation, adaptation, or restoration of mined land, or the development of mineral and other natural resources; but justifiable requirements of law and practice relating to the effects of mining on lands, water, and other resources may be reduced in equity or effectiveness unless they pertain similarly from State to State for all mining operations similarly situated.

(e) The States are in a position and have the responsibility to assure that mining shall be conducted in accordance with sound conservation principles, and with due regard for local conditions.

(2) The purposes of this Compact are to:

(a) Advance the protection and restoration of land, water and other resources affected by mining.

(b) Assist in the reduction or elimination or counteracting of pollution or deterioration of land, water and air attributable to mining.

(c) Encourage, with due recognition of relevant regional, physical, and other differences, programs in each of the party States which will achieve comparable results in protecting, conserving, and improving the usefulness of natural resources, to the end that the most desirable conduct of mining and related operations may be universally facilitated.

(d) Assist the party States in their efforts to facilitate the use of land and other resources affected by mining, so that such use may be consistent with sound land use, public health, and public safety, and to this end to study and recommend, wherever desirable, techniques for the improvement, restoration or protection of such land and other resources.

(e) Assist in achieving and maintaining an efficient and productive mining industry and in increasing economic and other benefits attributable to mining.

Article II Definitions

As used in this Compact, the term:

(1) "Mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter, any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location, and the preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use; but shall not include those aspects of deep mining not having significant effect on the surface, and shall not include excavation or grading when conducted solely in aid of on-site farming or construction.

(2) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a Territory or Possession of the United States.

Article III State Programs

Each party State agrees that within a reasonable time it will formulate and establish an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws, or the continuing of the same in force, to accomplish:

(1) The protection of the public and the protection of adjoining and other landowners from damage to their lands and the structures and other property thereon resulting from the conduct of mining operations or the abandonment or neglect of land and property formerly used in the conduct of such operations.

(2) The conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational or aesthetic value and utility of land and water.

(3) The institution and maintenance of suitable programs of adaptation, restoration, and rehabilitation of mined lands.

(4) The prevention, abatement and control of water, air and soil pollution resulting from mining - present, past and future.

Article IV

Powers

In addition to any other powers conferred upon the Interstate Mining Commission, established by Article V of this Compact, such Commission shall have power to:

- (1) Study mining operations, processes and techniques for the purpose of gaining knowledge concerning the effects of such operations, processes and techniques on land, soil, water, air, plant and animal life, recreation, and patterns of community or regional development or change.
- (2) Study the conservation, adaptation, improvement and restoration of land and related resources affected by mining.
- (3) Make recommendations concerning any aspect or aspects of law or practice and governmental administration dealing with matters within the purview of this Compact.
- (4) Gather and disseminate information relating to any of the matters within the purview of this Compact.
- (5) Cooperate with the federal government and any public or private entities having interests in any subject coming within the purview of this Compact.
- (6) Consult, upon the request of a party State and within available resources, with the officials of such State in respect to any problem within the purview of this Compact.
- (7) Study and make recommendations with respect to any practice, process, technique, or course of action that may improve the efficiency of mining or the economic yield from mining operations.
- (8) Study and make recommendations relating to the safeguarding of access to resources which are or may become the subject of mining operations to the end that the needs of the economy for the products of mining may not be adversely affected by unplanned or inappropriate use of land and other resources containing minerals or otherwise connected with actual or potential mining sites.

Article V

The Commission

- (1) There is hereby created an agency of the party States to be known as the "Interstate Mining Commission", hereinafter called "the Commission". The Commission shall be composed of one commissioner from each party State who shall be the Governor thereof. Pursuant to the laws of the party State, each Governor may have the assistance of an advisory body (including membership from mining industries, conservation interests, and such other public and private interests as may be appropriate) in considering problems relating to mining and in discharging the responsibilities as a Commissioner on the Commission. In any instance where a Governor is unable to attend a meeting of the commission or perform any other function in connection with the business of the Commission, he/she shall designate an alternate who shall represent him/her and act in his/her place and stead. The designation of an alternate shall be communicated by the Governor to the Commission in such manner as its bylaws may provide.
- (2) The Commissioners shall be entitled to one vote each on the Commission. No action of the Commission making a recommendation pursuant to Article IV (3), IV (7), and IV (8) or requesting, accepting or disposing of funds, services, or other property pursuant to this paragraph, Article V (7), V (8), or VII shall be valid unless taken at a meeting at which a majority of the total number of votes on the Commission is cast in favor thereof. All other action shall be by a majority of those present and voting: provided that action of the Commission shall be only at a meeting at which a majority of the Commissioners, or their alternates, is present. The Commission may establish and maintain such facilities as may be necessary for the transaction of its business. The Commission may acquire, hold, and convey real and personal property and any interest therein.
- (3) The Commission shall have a seal.

(4) The Commission shall elect annually, from among its members, a Chairman, a Vice-chairman, and a Treasurer. The Commission shall appoint an Executive Director and fix his/her duties and compensation. Such Executive Director shall serve at the pleasure of the Commission. The Executive Director, the Treasurer, and such other personnel as the Commission shall designate shall be bonded. The amount or amounts of such bond or bonds shall be determined by the Commission.

(5) Irrespective of the civil service, personnel or other merit system laws of any of the party States, the Executive Director, with the approval of the Commission, shall appoint, remove or discharge such personnel as may be necessary for the performance of the Commission's functions, and shall fix the duties and compensation of such personnel.

(6) The Commission may establish and maintain independently or in conjunction with a party State, a suitable retirement system for its employees. Employees of the Commission shall be eligible for Social Security coverage in respect of old age and survivor's insurance provided that the Commission takes such steps as may be necessary pursuant to the laws of the United States, to participate in such program of insurance as a governmental agency or unit. The Commission may establish and maintain or participate in such additional programs of employee benefits as it may deem appropriate.

(7) The Commission may borrow, accept or contract for the services of personnel from any State, the United States, or any other governmental agency, or from any person, firm, association or corporation.

(8) The Commission may accept for any of its purposes and functions under this Compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any State, the United States, or any other governmental agency, or from any person, firm, association or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the Commission pursuant to this paragraph or services borrowed pursuant to paragraph (7) of the Article shall be reported in the annual report of the Commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant or services borrowed and the identity of the donor or lender.

(9) The Commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The Commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party States.

(10) The Commission annually shall make to the Governor, Legislature and advisory body described in Article V (1) of each party State a report covering the activities of the Commission for the preceding year, and embodying such recommendations as may have been made by the Commission. The Commission may make such additional reports as it may deem desirable.

Article VI

Advisory, Technical, and Regional Committees

The Commission shall establish such advisory, technical, and regional committees as it may deem necessary, membership on which shall include private persons and public officials, and shall cooperate with the use and services of any such committees and the organizations which the members represent in furthering any of its activities. Such committees may be formed to consider problems of special interest to any party State, problems dealing with particular commodities or types of mining operations, problems related to reclamation, development, or use of mined land, or any other matters of concern to the Commission.

Article VII

Finance

(1) The Commission shall submit to the Governor or designated officer or officers of each party State a budget of its estimated expenditures for such period as may be required by the laws of that party State for presentation to the Legislature thereof.

(2) Each of the Commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party States. The total amount of appropriations requested under any such budget shall be apportioned among the party States as follows: one-half in equal shares, and the remainder in proportion to the value of minerals, ores, and other solid matter mined. In determining such values, the Commission shall employ such available public source or sources of information as, in its judgment, present the most equitable and accurate comparisons among the party States. Each of the Commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of minerals, ores, and other solid matter mined.

(3) The Commission shall not pledge the credit of any party State. The Commission may meet any of its obligations in whole or in part with funds available to it under Article V (8) of this Compact; provided that the Commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the Commission makes use of funds available to it under Article V (8) hereof, the Commission shall not incur any obligation prior to the allotment of funds by the party States adequate to meet the same.

(4) The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the Commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the Commission.

(5) The accounts of the Commission shall be open at any reasonable time for inspection by duly constituted officers of the party States and by any persons authorized by the Commission.

(6) Nothing contained herein shall be construed to prevent Commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the Commission.

Article VIII

Entry Into Force and Withdrawal

(1) This Compact shall enter into force when enacted into law by any four or more States. Thereafter, this Compact shall become effective as to any other State upon its enactment thereof.

(2) Any party State may withdraw from this Compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the Governor of the withdrawing State has given notice in writing of the withdrawal to the Governors of all other party States. No withdrawal shall affect any liability previously and separately agreed to, and already incurred by or chargeable to a party State, under Article VII (2), prior to the time of such withdrawal.

Article IX

Effect On Other Laws

Nothing in this Compact shall be construed to limit, repeal or supersede any other law of any party State.

Article X

Construction and Severability

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any State or of the United States, or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency,

person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any State participating herein, the Compact shall remain in full force and effect as to the remaining party States and in full force and effect as to the State affected as to all severable matters.

Enacted by Chapter 459, 2013 General Session

40-9-103 Participation by Utah.

- (1) The governor may appoint the director of the Division of Oil, Gas, and Mining to serve as the governor's official representative to the Interstate Mining Commission.
- (2) A copy of the bylaws of the Interstate Mining Commission shall be:
 - (a) placed on file with the director of the Division of Oil, Gas, and Mining; and
 - (b) available, at reasonable times, for inspection by the Legislature or an interested person.
- (3) As used in Article V (1), "agency of the party States" does not mean an agency of Utah.
- (4) A person or entity may not hold Utah liable for the obligations or solvency of:
 - (a) the retirement system described in Article V (6); or
 - (b) a program of employee benefits described in Article V (6).

Enacted by Chapter 459, 2013 General Session

Chapter 10

Coal Mining and Reclamation

40-10-1 Legislative finding.

The Utah Legislature finds that:

- (1) Coal mining operations presently contribute significantly to the nation's energy requirements; surface coal mining constitutes one method of extraction of the resource; the overwhelming percentage of Utah's coal reserves can only be extracted by underground mining methods; and it is, therefore, essential to the national interest to insure the existence of an expanding and economically healthy underground coal mining industry.
- (2) The expansion of coal mining in Utah to meet the nation's energy needs makes even more urgent the establishment of appropriate standards to minimize damage to the environment and to productivity of the soil and to protect the health and safety of the public.
- (3) Surface mining and reclamation technology is now developed so that effective and reasonable regulation of surface coal mining operations is an appropriate and necessary means to minimize so far as practicable the adverse social, economic, and environmental effects of the mining operations.
- (4) In recognition of the innate differences between coal and other mineral deposits and between surface and underground mining methods, the Legislature perceives a need for a separate chapter for effective and reasonable regulation of such operations.

Enacted by Chapter 145, 1979 General Session

40-10-2 Purpose.

It is the purpose of this chapter to:

- (1) grant to the Board and Division of Oil, Gas, and Mining the necessary authority to assure exclusive jurisdiction over nonfederal lands and cooperative jurisdiction over federal lands in regard to regulation of coal mining and reclamation operations as authorized pursuant to Public Law 95-87;
- (2) assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances thereto are fully protected from these operations;
- (3) assure that surface coal mining operations are conducted so as to protect the environment, that reclamation occurs as contemporaneously as possible with the operations, and that operations are not conducted where reclamation as required by this chapter is not economically or technologically feasible;
- (4) assure that appropriate procedures are provided for the public participation in the development, revision, and enforcement of rules, standards, reclamation plans, or programs established by the state under this chapter;
- (5) promote the reclamation of mined areas left without adequate reclamation prior to the effective date of this chapter and which continue, in their unreclaimed condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health or safety of the public; and
- (6) wherever necessary, exercise the full reach of state constitutional powers to insure the protection of the public interest through effective control of surface coal mining operations and efficient reclamation of abandoned mines.

Amended by Chapter 219, 1994 General Session

40-10-3 Definitions.

For the purposes of this chapter:

- (1) "Adjudicative proceeding" means:
 - (a) a division or board action or proceeding determining the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, permit, or license; or
 - (b) judicial review of a division or board action or proceeding specified in Subsection (1)(a).
- (2) "Alluvial valley floors" mean the unconsolidated stream laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation and windblown deposits.
- (3) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; but water impoundments may be permitted where the division determines that they are in compliance with Subsection 40-10-17(2)(h).
- (4) "Board" means the Board of Oil, Gas, and Mining and the board shall not be defined as an employee of the division.
- (5) "Division" means the Division of Oil, Gas, and Mining.
- (6) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this chapter in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably

be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement.

- (7) "Employee" means those individuals in the employ of the division and excludes the board.
- (8) "Lands eligible for remining" means those lands that would otherwise be eligible for expenditures under Section 40-10-25 or 40-10-25.1.
- (9) "Operator" means any person, partnership, or corporation engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth by coal mining within 12 consecutive calendar months in any one location.
- (10) "Other minerals" mean clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substances of commercial value excavated in solid or solution form from natural deposits on or in the earth, exclusive of coal and those minerals which occur naturally in liquid or gaseous form.
- (11) "Permit" means a permit to conduct surface coal mining and reclamation operations issued by the division.
- (12) "Permit applicant" or "applicant" means a person applying for a permit.
- (13) "Permitting agency" means the division.
- (14) "Permit area" means the area of land indicated on the approved map submitted by the operator with his application, which area of land shall be covered by the operator's bond as required by Section 40-10-15 and shall be readily identifiable by appropriate markers on the site.
- (15) "Permittee" means a person holding a permit.
- (16) "Person" means an individual, partnership, association, society, joint stock company, firm, company, corporation, or other governmental or business organization.
- (17) "Prime farmland" means the same as prescribed by the United States Department of Agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding, and erosion characteristics.
- (18) "Reclamation plan" means a plan submitted by an applicant for a permit which sets forth a plan for reclamation of the proposed surface coal mining operations pursuant to Section 40-10-10.
- (19) "Surface coal mining and reclamation operations" mean surface mining operations and all activities necessary and incident to the reclamation of these operations after the effective date of this chapter.
- (20) "Surface coal mining operations" mean:
 - (a) Activities conducted on the surface of lands in connection with a surface coal mine or subject to the requirements of Section 40-10-18, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. These activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site; but these activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16-2/3% of the

tonnage of minerals removed for purposes of commercial use or sale or coal explorations subject to Section 40-10-8.

- (b) The areas upon which the activities occur or where the activities disturb the natural land surface. These areas shall also include any adjacent land the use of which is incidental to the activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of the activities and for haulage and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface resulting from or incident to the activities.
- (21) "Unanticipated event or condition" means an event or condition encountered in a remining operation that was not contemplated by the applicable surface coal mining and reclamation permit.
- (22) "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of this chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of the permit or this chapter due to indifference, lack of diligence, or lack of reasonable care.

Amended by Chapter 324, 2010 General Session

40-10-5 Activities exempted from chapter.

This chapter does not apply to the following activities:

- (1) the extraction of coal by a landowner for his own noncommercial use from land owned or leased by him; or
- (2) the extraction of coal as an incidental part of federal, state, or local government-financed highway or other construction under rules established by the division.

Amended by Chapter 225, 1991 General Session

40-10-6 Powers, functions, and duties of board and division.

In addition to those provided in Title 40, Chapter 8, Utah Mined Land Reclamation Act, the board and division have the following powers, functions, and duties:

- (1) to make and promulgate in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the rules as are specifically necessary for the regulation of coal mining operations and reclamation operations;
- (2) to authorize its employees, agents, or contractors to enter upon any property for the purpose of carrying out the provisions of this chapter and Title 40, Chapter 8, Utah Mined Land Reclamation Act;
- (3) to establish specific reclamation and performance standards for new and existing coal mining operations and to effectuate these standards retroactively;
- (4) to prohibit mining and exploration operations without a permit and to establish procedures and requirements for the preparation, submission, approval, denial, termination, and modification of applications for coal mining and reclamation permits and for coal exploration permits;
- (5) to set and assess an application fee based on no more than the actual cost of review and processing of the application, this fee to accompany each application for a surface coal mining and reclamation permit and each application for an exploration permit;

- (6) to establish procedures and detailed requirements for all reclamation plans submitted as part of a permit application;
- (7) to condition the issuance of a permit to commence or continue surface mining operations upon the posting of performance bonds, deposits, or sureties and to make provision for the release of same in compliance with the requirements of this chapter;
- (8) to appoint or employ technical support, legal services, or independent consultants in furtherance of the objectives of this chapter and shall be responsible for coordination with other agencies in matters relating to mined land reclamation and the application of related law; and
- (9) to do all other things and take such other actions retroactively or otherwise within the purposes of this chapter as may be necessary to enforce its provisions.

Amended by Chapter 382, 2008 General Session

40-10-6.5 Rulemaking authority and procedure.

- (1) The board shall promulgate rules under this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (2) Except as provided in Subsection (3), no rule which the board adopts for the purpose of the state administering a program under the federal Surface Mining Control and Reclamation Act may be more stringent than the corresponding federal regulations which address the same circumstances. In adopting such rules, the board may incorporate by reference corresponding federal regulations.
- (3) The board may adopt rules more stringent than corresponding federal regulations for the purpose described in Subsection (2), only if it makes a written finding after public comment and hearing, and based on evidence in the record, that the corresponding federal regulation is not adequate to protect public safety and the environment of the state. Those findings shall be accompanied by an opinion referring to and evaluating the public safety and environmental information and studies contained in the record which form the basis for the board's conclusion.

Amended by Chapter 382, 2008 General Session

40-10-6.7 Administrative procedures.

- (1)
 - (a) Informal adjudicative proceedings shall be conducted by the division under this chapter and shall be referred to as conferences or informal conferences.
 - (b) The conduct of conferences shall be governed by rules adopted by the board which are in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
- (2)
 - (a)
 - (i) Formal adjudicative proceedings shall be conducted by the division or board under this chapter and shall be referred to as hearings or public hearings.
 - (ii) The conduct of hearings shall be governed by rules adopted by the board which are in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
 - (b) Hearings under this chapter shall be conducted in a manner which guarantees the parties' due process rights. This includes:
 - (i) the right to examine any evidence presented to the board;
 - (ii) the right to cross-examine any witness; and
 - (iii) a prohibition of ex parte communication between any party and a member of the board.

- (c) A verbatim record of each public hearing required by this chapter shall be made, and a transcript made available on the motion of any party or by order of the board.

Amended by Chapter 382, 2008 General Session

40-10-7 Financial interest in mining operation prohibited -- Penalty -- Enforcement -- Quorum for board hearings.

- (1) No employee of the division performing any function or duty under this chapter shall have a direct or indirect financial interest in any underground or surface coal mining operation. Whoever knowingly violates the provisions of this subsection shall, upon conviction, be punished by a fine of not more than \$2,500, or by imprisonment of not more than one year, or by both. The division shall adopt rules to establish methods by which the provisions of this subsection will be monitored and enforced by the division, including appropriate provisions for filing by these employees and the review of statements and supplements to same concerning any financial interest which may be affected by this section.
- (2) For the purpose of holding hearings under this chapter, a quorum of the board shall consist of those members or member who has no conflict of interest as set out in Public Law 95-87 and the rules and regulations adopted under it.

Amended by Chapter 219, 1994 General Session

40-10-8 Exploration rules issued by division -- Contents -- Confidential information not to be publicly available -- Penalty for violation -- Division approval required for removal of excess coal.

- (1) Coal exploration operations which substantially disturb the natural land surface shall be conducted in accordance with exploration rules issued by the division. The rules shall include, at a minimum:
 - (a) the requirement that prior to conducting any exploration under this section, any person must file with the division notice of intention to explore, and the notice shall include a description of the exploration area and the period of proposed exploration; and
 - (b) provisions for reclamation in accordance with performance standards in Section 40-10-17 of all lands disturbed in exploration, including excavations, roads, drill holes, and the removal of necessary facilities and equipment.
- (2) Information submitted to the division pursuant to this section as confidential concerning trade secrets or privileged commercial or financial information which relates to the competitive rights of the person or entity intending to explore the described area shall not be available for public examination.
- (3) Any person who conducts any coal exploration activities which substantially disturb the natural land surface in violation of this section or rules issued pursuant to it shall be subject to the provisions of Section 40-10-20.
- (4) No person shall remove more than 250 tons of coal pursuant to an exploration permit without the specific written approval of the division.

Amended by Chapter 219, 1994 General Session

40-10-9 Permit required for surface coal mining operations -- Exemptions -- Expiration of permit -- Maximum time for commencement of mining operations -- Renewal of permit.

- (1) No person shall engage in or carry out surface coal mining operations within the state unless that person has first obtained a permit issued by the division pursuant to an approved mining and reclamation program, but the permit will not be required if the operations are exempt as provided in Section 40-10-5.
- (2)
 - (a) All permits issued pursuant to the requirements of this chapter shall be issued for a term not to exceed five years; but if the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of the operation, and if the application is full and complete for the specified longer term, the division may grant a permit for the longer term.
 - (b) A successor in interest to a permittee who applies for a new permit within 30 days after succeeding to the interest and who is able to obtain the bond coverage of the original permittee may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan of the original permittee until the successor's application is granted or denied.
- (3)
 - (a) A permit shall terminate if the permittee has not commenced the surface coal mining operations covered by the permit within three years after the issuance of the permit; but the division may grant reasonable extensions of time upon a showing that the extensions are necessary by reason of litigation precluding this commencement or threatening substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee.
 - (b) With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at such time as the construction of the synthetic fuel or generating facility is initiated.
- (4)
 - (a)
 - (i) Any valid permit issued pursuant to this chapter shall carry with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit.
 - (ii) The holders of the permit may apply for renewal, and the renewal shall be issued (but on application for renewal the burden shall be upon the opponents of renewal), subsequent to fulfillment of the public notice requirements of Sections 40-10-13 and 40-10-14 unless it is established that and written findings by the division are made that:
 - (A) the terms and conditions of the existing permit are not being satisfactorily met;
 - (B) the present surface coal mining and reclamation operation is not in compliance with the approved plan;
 - (C) the renewal requested substantially jeopardizes the operator's continuing responsibility on existing permit areas;
 - (D) the operator has not provided evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested in the application as well as any additional bond the division might require pursuant to Section 40-10-15; or
 - (E) any additional revised or updated information required by the division has not been provided.
 - (iii) Prior to the approval of any renewal of any permit, the division shall provide notice to the appropriate public authorities.
 - (b) If an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the

application for renewal of a valid permit which addresses any new land areas shall be subject to the full standards applicable to new applications under this chapter; but if the surface coal mining operations authorized by a permit issued pursuant to this chapter were not subject to the standards contained in Subsections 40-10-11(2)(e)(i) and 40-10-11(2)(e)(ii) by reason of complying with the provisions of Subsection 40-10-11(2)(e), then the portion of the application for renewal of the permit which addresses any new land areas previously identified in the reclamation plan submitted pursuant to Section 40-10-10 shall not be subject to the standards contained in Subsections 40-10-11(2)(e)(i) and 40-10-11(2)(e)(ii).

(c)

- (i) Any permit renewal shall be for a term not to exceed the period of the original permit established by this chapter.
- (ii) Application for permit renewal shall be made at least 120 days prior to the expiration of the valid permit.

Amended by Chapter 306, 2007 General Session

40-10-10 Permit application fee -- Submission of application and reclamation plan -- Determinations, tests, and samplings -- Filing of application -- Insurance required -- Blasting plan.

- (1) Each application for a surface coal mining and reclamation permit under the provisions of this chapter shall be accompanied by a fee as determined by the division. The fee specified in this Subsection (1) may not exceed the cost by the division to process and review the application.
- (2)
 - (a) The permit application and the reclamation plan submitted as part of a permit application shall be submitted in the manner, form, and with the content specified by the division in its rules, and shall include the names and addresses of:
 - (i) the permit applicant;
 - (ii) every legal owner of record of the surface and mineral estate to be mined;
 - (iii) the holders, of record, of any leasehold interest in the property;
 - (iv) any purchaser, of record, of the property under a real estate contract;
 - (v) the operator, if he is a person different from the applicant; and
 - (vi) the names and addresses of the principals, officers, and resident agent for service of process, if any of these are business entities other than a single proprietor.
 - (b)
 - (i) A permit application shall include:
 - (A) an accurate map or plan, to an appropriate scale, clearly showing the land to be affected as of the date of the application, and the area of land within the permit area upon which the applicant has the legal right to enter and commence surface mining operations; and
 - (B) a statement of those documents upon which the applicant bases his legal right to enter and commence surface mining operations on the area affected, and whether that right is the subject of pending court litigation.
 - (ii) This chapter may not be construed as vesting in the division the jurisdiction to adjudicate property title disputes.
 - (c)
 - (i) A permit application shall also include a:
 - (A) determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site with respect to the hydrologic regime;

- (B) determination of the quantity and quality of water in surface and groundwater systems, including the dissolved and suspended solids under seasonal flow conditions; and
- (C) collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the division of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and, particularly, upon water availability.
- (ii) The determination required under Subsection (2)(c)(i) shall not be required until the hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency.
- (iii) The permit shall not be approved until the information required under this section is available and is incorporated into the application.
- (d)
 - (i) A permit application will also include the following information:
 - (A) the result of test borings or core samplings from the permit area, including logs of the drill holes;
 - (B) the thickness of the coal seam found;
 - (C) an analysis of the chemical properties of the coal;
 - (D) the sulfur content of any coal seam;
 - (E) chemical analysis of potentially acid or toxic-forming sections of the overburden; and
 - (F) chemical analysis of the stratum lying immediately underneath the coal to be mined.
 - (ii) Application requirements of Subsection (2)(d)(i) may be waived by the division if there is a written determination that these requirements are unnecessary.
- (3)
 - (a) If the division finds that the probable total annual production at all locations of a coal surface mining operator will not exceed 300,000 tons, and if funding is available under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. Sec. 1201 et seq., the cost of the following activities shall be paid by the division, upon the written request of the operator in connection with a permit application:
 - (i) the determination of probable hydrologic consequences required by Subsection (2)(c), including the engineering analyses and designs necessary for the determination;
 - (ii) the development of cross-section maps and plans of the land to be affected, including the area to be mined;
 - (iii) the geologic drilling and statement of results of test borings and core samplings required by Subsection (2)(d);
 - (iv) the collection of archaeological and historical information required by the division, and the preparation of those plans;
 - (v) preblast surveys required by Subsection 40-10-17(2)(o); and
 - (vi) the collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values required by the division under this act.
 - (b) The activities specified in Subsection (3)(a) shall be performed by a qualified public or private laboratory or other qualified public or private entity designated by the division.
 - (c) A coal operator who has received assistance pursuant to this Subsection (3) shall reimburse the division for the cost of the services rendered, if the division finds that the operator's actual and attributed annual production of coal for all locations exceeds 300,000 tons during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit.
- (4)

- (a) Information pertaining to coal seams, test borings, core samplings, or soil samples or other equivalent information, as required by this section, shall be made available to a person whose interest is, or may be, adversely affected.
- (b) Information which pertains only to the analysis of the chemical and physical properties of the coal, except information regarding any mineral or elemental content which is potentially toxic to the environment, shall be kept confidential and not made a matter of public record.
- (5) An applicant for a surface coal mining and reclamation permit shall file a copy of the application for public inspection with the county clerk of the county, or an appropriate public office approved by the division where the mining is proposed to occur, except for information pertaining to the coal seam itself.
- (6)
 - (a) An applicant for a permit shall be required to submit to the division as part of the permit application a certificate issued by an insurance company, authorized to do business in the state, certifying that the applicant has a public liability insurance policy in force for the surface mining and reclamation operation for which the permit is sought, or evidence that the applicant has satisfied other state or federal self-insurance requirements.
 - (b) The policy shall:
 - (i) provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations, including the use of explosives, and entitled to compensation under the applicable provisions of state law; and
 - (ii) be maintained in full force and effect during the terms of the permit or any renewal, including the length of all reclamation operations.
- (7) An applicant for a surface coal mining and reclamation permit shall submit to the division, as part of the permit application, a blasting plan which shall outline the procedures and standards by which the operator will meet the provisions of Subsection 40-10-17(2)(o).

Amended by Chapter 27, 2006 General Session

40-10-11 Division action on permit application -- Requirements for approval -- List of applicant's mining law violation -- Restoration of prime farmland.

- (1)
 - (a)
 - (i) After a complete mining application and reclamation plan or a revision or renewal of an application and plan is submitted to the division as required by this chapter and the public is notified and given an opportunity for a hearing as required by Section 40-10-13, the division shall grant, require modification of, or deny the permit application.
 - (ii) The division shall make its decision within a reasonable time set by the division and notify the applicant in writing.
 - (b) The applicant for a permit, or a revision of a permit shall have the burden of establishing that the application is in compliance with all requirements of this chapter.
 - (c) Within 10 days after the granting of a permit, the division shall provide to the local governmental officials in the local political subdivision in which the area of affected land is located:
 - (i) notification that a permit has been issued; and
 - (ii) a description of the location of the land.
- (2) No permit or revision application shall be approved unless the application affirmatively demonstrates and the division finds in writing on the basis of the information set forth in the

application, or from information otherwise available which will be documented in the approval and made available to the applicant, that:

- (a) the permit application is accurate and complete and that all requirements of this chapter have been complied with;
 - (b) the applicant has demonstrated that the reclamation requirements under this chapter can be accomplished under the reclamation plan contained in the permit application;
 - (c) the assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance specified in Subsection 40-10-10(2)(c) has been made by the division and the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area;
 - (d) the area proposed to be mined is not included within an area:
 - (i) designated as unsuitable for surface coal mining pursuant to Section 40-10-24; or
 - (ii) under study for this designation in an administrative proceeding commenced under Subsection 40-10-24(2), unless the operator demonstrates that prior to January 1, 1977, substantial legal and financial commitments were made to the operation;
 - (e) the proposed surface coal mining operation would not:
 - (i) interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated other than on:
 - (A) undeveloped range lands that are not significant to farming on alluvial valley floors; or
 - (B) lands which the division finds are of such small acreage that if farming is interrupted, discontinued, or precluded, the impact on the farm's agricultural production will be negligible; or
 - (ii) materially damage the quantity or quality of water in surface or underground water systems that supply alluvial valley floors specified in Subsection (2)(e)(i), but this Subsection (2)(e) shall not affect those surface coal mining operations which in the year preceding August 3, 1977, produced coal in commercial quantities and were located within or adjacent to alluvial valley floors or had obtained specific permit approval by the division to conduct surface coal mining operations within these alluvial valley floors; and
 - (f) if the private mineral estate has been severed from the private surface estate, the applicant has submitted to the division:
 - (i) the written consent of the surface owner to the extraction of coal by surface mining methods provided that nothing in this Subsection (2) shall be construed to:
 - (A) increase or diminish any property right established under the laws of the state; or
 - (B) authorize the board or division to adjudicate property right disputes;
 - (ii) a conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or
 - (iii) documentation consistent with state law that establishes the status of the surface-subsurface legal relationship.
- (3)
- (a)
 - (i) The applicant shall file with the permit application a list of any notices of violations of the Surface Mining Control and Reclamation Act of 1977 or its implementing regulations, this chapter, any state or federal program or law approved under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. Sec. 1201 et seq., and any law, rule, or regulation of the United States, State of Utah, or any department or agency in the United States pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation during the three-year period prior to the date of application.

- (ii) The list required in Subsection (3)(a)(i) shall also indicate the final resolution of any notice of violation.
 - (b) If the list or other information available to the division indicates that any surface coal mining operation owned or controlled by the applicant is currently in violation of this chapter or other laws and regulations referred to in this Subsection (3), the permit shall not be issued until the applicant submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the division, department, or agency which has jurisdiction over the violation.
 - (c) No permit shall be issued to an applicant after a finding by the board, after opportunity for hearing, that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of this chapter, the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. Sec. 1201 et seq., the implementing federal regulations, any state or federal programs enacted under the Surface Mining Control and Reclamation Act, or other provisions of the approved Utah program of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of this chapter.
- (4)
- (a)
 - (i) In addition to finding the application in compliance with Subsection (2), if the area proposed to be mined contains prime farmland pursuant to division rules, the division shall grant a permit to mine on prime farmland if the division finds in writing that the operator has the technological capability to restore the mined area within a reasonable time to an equivalent or higher level of yield as nonmined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards specified in division rules.
 - (ii) Except for compliance with Subsection (2), the requirements of this subsection shall apply to all permits issued after August 3, 1977.
 - (b) This Subsection (4) shall not apply to any permit issued prior to August 3, 1977, or to any revisions or renewals of the permit, or to any existing surface mining operations for which a permit was issued prior to August 3, 1977.
- (5)
- (a) After October 24, 1992, the prohibition of Subsection (3) shall not apply to a permit application if the violation resulted from an unanticipated event or condition that occurred at a surface coal mining operation on lands eligible for remining under a permit held by the person making the application.
 - (b) As used in this Subsection (5), the term "violation" has the same meaning as the term has under Subsection (3).

Amended by Chapter 309, 2009 General Session

40-10-12 Revised permit and reclamation plan -- Application -- Transfer, assignment, or sale of rights -- Revision or modification of permit provisions.

- (1)
- (a) During the term of the permit, the permittee may submit an application for a revision of the permit, together with a revised reclamation plan, to the division.
 - (b) An application for a revision of a permit shall not be approved unless the division finds that reclamation as required by this chapter can be accomplished under the revised reclamation plan.

- (c) The revision shall be approved or disapproved within a period of time established by the division.
- (d)
 - (i) The division shall establish guidelines determining the scale or extent of a revision request for which all permit application information, requirements, and procedures, including notice and hearings, shall apply.
 - (ii) Any revisions that propose significant alterations in the reclamation plan shall, at a minimum, be subject to notice and hearing requirements.
- (e) Any extensions to the area covered by the permit, except incidental boundary revisions, must be made by:
 - (i) an application for a significant revision of the permit; or
 - (ii) an application for another permit.
- (2) No transfer, assignment, or sale of the rights granted under any permit issued according to this chapter shall be made without the written approval of the division.
- (3)
 - (a) The division shall, within a time limit prescribed in rules adopted by the board, review outstanding permits and may require reasonable revision or modification of the permit provisions during the term of the permit.
 - (b) The revision or modification shall be:
 - (i) based upon a written finding; and
 - (ii) subject to notice and hearing requirements established by this chapter.

Amended by Chapter 321, 2007 General Session

40-10-13 Advertisement of ownership, location, and boundaries -- Notice to interested agencies or bodies -- Objections -- Conference.

- (1)
 - (a) At the time of submission of an application for a surface coal mining and reclamation permit, or revision of an existing permit pursuant to the provisions of this chapter, the applicant shall submit to the division a copy of the applicant's advertisement of the ownership, precise location, and boundaries of the land to be affected.
 - (b) At the time of submission the advertisement shall be placed by the applicant:
 - (i) in a local newspaper of general circulation in the locality of the proposed surface mine at least once a week for four consecutive weeks; and
 - (ii) as required in Section 45-1-101.
 - (c) The division shall notify various local governmental bodies, planning agencies, and sewage and water treatment authorities of water companies in the locality in which the proposed surface mining will take place, notifying them of the operator's intention to surface mine a particularly described tract of land and indicating the application's permit number and where a copy of the proposed mining and reclamation plan may be inspected.
 - (d) These local bodies, agencies, authorities, or companies may submit written comments within a reasonable period established by the division on the mining applications with respect to the effects of the proposed operation on the environment which are within their area of responsibility.
 - (e) These comments shall immediately be transmitted to the applicant by the division and shall be made available to the public at the same locations as are the mining applications.
- (2)

- (a) Any person having an interest which is or may be adversely affected or the officer or head of any federal, state, or local governmental agency or authority shall have the right to file written objections to the proposed initial or revised application for a permit for surface coal mining and reclamation operations with the division within 30 days after the last publication of the notice. These objections shall immediately be transmitted to the applicant by the division and shall be made available to the public.
- (b) If written objections are filed and a conference requested, the division shall then hold a conference within a reasonable time of the receipt of the objections or request. The conference shall be informal and shall be conducted in accordance with the procedures described in this Subsection (2)(b), irrespective of the requirements of Section 63G-4-203, Administrative Procedures Act. The conference shall be held in the locality of the coal mining and reclamation operation if requested within a reasonable time after written objections or the request for an informal conference are received by the division. The date, time, and location of the conference shall be advertised by the division in a newspaper of general circulation in the locality at least two weeks prior to the scheduled conference date. The division may arrange with the applicant upon request by any party to the administrative proceeding access to the proposed mining area for the purpose of gathering information relevant to the proceeding. An electronic or stenographic record shall be made of the conference proceeding unless waived by all parties. This record shall be maintained and shall be accessible to the parties until final release of the applicant's performance bond. In the event all parties requesting the conference stipulate agreement prior to the requested conference and withdraw their request, the conference need not be held.

Amended by Chapter 388, 2009 General Session

40-10-14 Division's findings issued to applicant and parties to conference -- Notice to applicant of approval or disapproval of application -- Hearing -- Temporary relief -- Appeal to district court -- Further review.

- (1) If a conference has been held under Subsection 40-10-13(2), the division shall issue and furnish the applicant for a permit and persons who are parties to the proceedings with the written finding of the division granting or denying the permit in whole or in part and stating the reasons, within the 60 days after the conference.
- (2) If there has been no conference held under Subsection 40-10-13(2), the division shall notify the applicant for a permit within a reasonable time as set forth in rules, taking into account the time needed for proper investigation of the site, the complexity of the permit application, and whether or not written objection to the application has been filed, whether the application has been approved or disapproved in whole or part.
- (3) Upon approval of the application, the permit shall be issued. If the application is disapproved, specific reasons shall be set forth in the notification. Within 30 days after the applicant is notified of the final decision of the division on the permit application, the applicant or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the final determination. The board shall hold a hearing pursuant to the rules of practice and procedure of the board within 30 days of this request and provide notification to all interested parties at the time that the applicant is notified. Within 30 days after the hearing the board shall issue and furnish the applicant, and all persons who participated in the hearing, with the written decision of the board granting or denying the permit in whole or in part and stating the reasons.

- (4) Where a hearing is requested pursuant to Subsection (3), the board may, under conditions it prescribes, grant temporary relief it deems appropriate pending final determination of the proceedings if:
 - (a) all parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;
 - (b) the person requesting the relief shows that there is a substantial likelihood that the person will prevail on the merits of the final determination of the proceedings; and
 - (c) the relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.
- (5) For the purpose of the hearing, the board may administer oaths, subpoena witnesses or written or printed materials, compel attendance of the witnesses or production of the materials, and take evidence, including, but not limited to, site inspections of the land to be affected and other surface coal mining operations carried on by the applicant in the general vicinity of the proposed operation. A verbatim record of each public hearing required by this chapter shall be made, and a transcript made available on the motion of any party or by order of the board.
- (6)
 - (a) An applicant or person with an interest which is or may be adversely affected who has participated in the proceedings as an objector, and who is aggrieved by the decision of the board, may appeal the decision of the board directly to the Utah Supreme Court.
 - (b) If the board fails to act within the time limits specified in this chapter, the applicant or any person with an interest which is or may be adversely affected, who has requested a hearing in accordance with Subsection (3), may bring an action in the district court for the county in which the proposed operation is located.
 - (c) Any party to the action in district court may appeal from the final judgment, order, or decree of the district court.
 - (d) Time frames for appeals under Subsections (6)(a) through (c) shall be consistent with applicable provisions in Section 63G-4-401.

Amended by Chapter 382, 2008 General Session

40-10-15 Performance bond -- Duration of liability under bond -- Cash deposit or securities in lieu of bond -- Surety -- Adjustment of amount.

- (1) After a surface coal mining and reclamation permit application has been approved but before the permit is issued, the applicant shall file with the division on a form prescribed and furnished by the division, a bond for performance which is payable to the state and the United States, if appropriate, which is conditioned on faithful performance of all the requirements of this chapter and the permit. The bond shall cover that area of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. As succeeding increments of surface coal mining and reclamation operations are to be initiated and conducted within the permit area, the permittee shall file with the division an additional bond or bonds to cover these increments in accordance with this section. The amount of the bond required for each bonded area shall depend upon the reclamation requirements of the approved permit; shall reflect the probable difficulty of reclamation, giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential; and shall be determined by the division. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by the division in the event of forfeiture and in no case shall the bond for the entire area under one permit be less than \$10,000.

- (2) Liability under the bond shall be for the duration of the surface coal mining and reclamation operation and for a period coincident with the operator's responsibility for revegetation requirements in Section 40-10-17. The bond shall be executed by the operator and a corporate surety licensed to do business in the state, except that the operator may elect to deposit cash, negotiable bonds of the United States government, or negotiable certificates of deposit of any bank organized or transacting business in the United States. The cash deposit or market value of the securities shall be equal to or greater than the amount of the bond required for the bonded area.
- (3) The division may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the division the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond the amount.
- (4) Cash or securities so deposited shall be deposited upon the same terms as the terms upon which surety bonds may be deposited. The securities shall be security for the repayment of the negotiable certificate of deposit.
- (5) The amount of the bond, surety, or deposit required and the terms of each acceptance of the applicant's bond shall be adjusted by the division from time to time as affected land acreages are increased or decreased or where the cost of future reclamation changes.

Amended by Chapter 219, 1994 General Session

40-10-16 Release of performance bond, surety, or deposit -- Inspection and evaluation of reclamation work -- Action on application for release of bond -- Objections -- Formal hearing or informal conference.

- (1) The division shall adopt and promulgate rules providing for the release of all or part of a performance bond, surety, or deposit which will include the following requirements:
 - (a) filing of a request with the division by the operator; and
 - (b) advertisement by the operator designed to give public notice of the release and the reclamation steps taken by the operator.
- (2) Upon receipt of the notification and request, the division shall within 30 days conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance of future occurrence of the pollution, and the estimated cost of abating the pollution. The division shall notify the operator in writing of its decision to release or not to release all or part of the performance bond or deposit within 60 days from the filing of the request, if no public hearing is held pursuant to Subsection (6), and if there has been a public hearing held pursuant to Subsection (6), within 30 days thereafter.
- (3) The division may release in whole or in part the bond or deposit if the division is satisfied the reclamation covered by the bond or deposit or portion of them has been accomplished as required by this chapter according to the schedule set forth in the division's rules, but no bond shall be fully released until all reclamation requirements of this chapter are finally met.
- (4) If the division disapproves the application for release of the bond or portion of it, the division shall notify the permittee in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing opportunity for a public hearing.

- (5) When any application for total or partial bond release is filed with the division, the division shall notify the municipality in which a surface coal mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.
- (6)
- (a) Any person with a valid legal interest which may be adversely affected by release of the bond or the responsible officer or head of any federal, state, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation, or is authorized to develop and enforce environmental standards with respect to these operations shall have the right to file written objections to the proposed release from bond with the division within 30 days after the last publication of the above notice.
 - (b) If written objections are filed and a conference is requested, the division shall inform all the interested parties of the time and place of the conference and hold an informal conference within 30 days after the request is filed with the division.
 - (c) The conference officer may convert the conference to a formal proceeding under the standards set forth by Section 63G-4-202. The matter shall be scheduled for hearing before the board and a hearing shall be held in accordance with the rules of practice and procedure of the board.
 - (d) A decision from the informal conference may be appealed to the board. The board shall hold a hearing pursuant to the rules of practice and procedure of the board.

Amended by Chapter 382, 2008 General Session

40-10-17 Performance standards for all coal mining and reclamation operations -- Additional standards for steep-slope surface coal mining -- Variances.

- (1) Any permit issued pursuant to this chapter to conduct surface coal mining shall require that the surface coal mining operations will meet all applicable performance standards of this chapter, and such other requirements as the division shall promulgate.
- (2) General performance standards shall be applicable to all surface coal mining and reclamation operations and shall require the operations as a minimum to:
 - (a) Conduct surface coal mining operations so as to maximize the utilization and conservation of the solid fuel resource being recovered so that re-affecting the land in the future through surface coal mining can be minimized.
 - (b) Restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses of which there is reasonable likelihood, so long as the use or uses does not present any actual or probable hazard to public health or safety or pose any actual or probable threat of water diminution or pollution, and the permit applicant's declared proposed land use following reclamation is not considered to be impractical or unreasonable, inconsistent with applicable land use policies and plans, involves unreasonable delay in implementation, or is violative of federal, state, or local law.
 - (c) Except as provided in Subsection (3) with respect to all surface coal mining operations backfill, compact (where advisable to insure stability or to prevent leaching of toxic materials) and grade in order to restore the approximate original contour of the land with highwalls, spoil piles, and depressions eliminated (unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to this chapter); but in surface coal mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit and the thickness of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that

the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour, the operator, at a minimum, shall backfill, grade, and compact (where advisable) using all available overburden and other spoil and waste materials to attain the lowest practicable grade but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region. In surface coal mining where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour, the operator shall, after restoring the approximate contour, backfill, grade, and compact (where advisable) the excess overburden and other spoil and waste materials to attain the lowest grade but more than the angle of repose, and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region and that the overburden or spoil shall be shaped and graded in such a way as to prevent slides, erosion, and water pollution and is revegetated in accordance with the requirements of this chapter.

- (d) Stabilize and protect all surface areas, including spoil piles affected by the surface coal mining and reclamation operation to effectively control erosion and attendant air and water pollution.
- (e) Remove the topsoil from the land in a separate layer, replace it on the backfill area, or if not utilized immediately, segregate it in a separate pile from other spoil, and when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful cover by quick growing plant or other means thereafter so that the topsoil is preserved from wind and water erosion, remains free of any contamination by other acid or toxic material, and is in a usable condition for sustaining vegetation when restored during reclamation; except if topsoil is of insufficient quantity or of poor quality for sustaining vegetation, or if other strata can be shown to be more suitable for vegetation requirements, then the operator shall remove, segregate, and preserve in a like manner the other strata which is best able to support vegetation.
- (f) Restore the topsoil or the best available subsoil which is best able to support vegetation.
- (g) For all prime farmlands, as identified in the rules, to be mined and reclaimed, specifications for soil removal, storage, replacement, and reconstruction, the operator shall, as a minimum, be required to:
 - (i) segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity, and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material;
 - (ii) segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of these horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil, and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

- (iii) replace and regrade the root zone material described in Subsection (2)(g)(ii) above with proper compaction and uniform depth over the regraded spoil material; and
 - (iv) redistribute and grade in a uniform manner the surface soil horizon described in Subsection (2)(g)(i).
- (h) Create, if authorized in the approved mining and reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities only when it is adequately demonstrated that:
- (i) the size of the impoundment is adequate for its intended purposes;
 - (ii) the impoundment dam construction will be so designed as to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under Public Law 83-566 (16 U.S.C. 1006);
 - (iii) the quality of impounded water will be suitable on a permanent basis for its intended use and that discharges from the impoundment will not degrade the water quality below water quality standards established pursuant to applicable federal and state law in the receiving stream;
 - (iv) the level of water will be reasonably stable;
 - (v) final grading will provide adequate safety and access for proposed water users; and
 - (vi) these water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.
- (i) Conducting any augering operation associated with surface mining in a manner to maximize recoverability of mineral reserves remaining after the operation and reclamation are complete and seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the division determines that the resulting impoundment of water in the auger holes may create a hazard to the environment or the public health or safety; but the permitting authority may prohibit augering if necessary to maximize the utilization, recoverability, or conservation of the solid fuel resources or to protect against adverse water quality impacts.
- (j) Minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of water in surface and groundwater systems both during and after surface coal mining operations and during reclamation by:
- (i) avoiding acid or other toxic mine drainage by such measures as, but not limited to:
 - (A) preventing or removing water from contact with toxic-producing deposits;
 - (B) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses; and
 - (C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keep acid or other toxic drainage from entering ground and surface waters;
 - (ii)
 - (A) conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event shall contributions be in excess of requirements set by applicable state or federal law; and
 - (B) constructing any siltation structures pursuant to this Subsection (2)(j)(ii) prior to commencement of surface coal mining operations, such structures to be certified by a qualified registered engineer to be constructed as designed and as approved in the reclamation plan;

- (iii) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the division;
- (iv) restoring recharge capacity of the mined area to approximate premining conditions;
- (v) avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;
- (vi) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the state; and
- (vii) such other actions as the division may prescribe.
- (k) With respect to surface disposal of mine wastes, tailings, coal processing wastes, and other waste in areas other than the mine working or excavations, stabilize all waste piles in designated areas through construction in compacted layers, including the use of incombustible and impervious materials, if necessary, and assure the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to the provisions of this chapter.
- (l) Refrain from surface coal mining within 500 feet from active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners; but the division shall permit an operator to mine near, through, or partially through an abandoned underground mine or closer to an active underground mine if:
 - (i) the nature, timing, and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are jointly approved by the departments, divisions, and agencies concerned with surface mine reclamation and the health and safety of underground miners; and
 - (ii) the operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.
- (m) Design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon, in accordance with the standards and criteria developed pursuant to the division's rules, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes, and used either temporarily or permanently as dams or embankments.
- (n) Insure that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters and that contingency plans are developed to prevent sustained combustion.
- (o) Insure that explosives are used only in accordance with existing state and federal law and the rules adopted by the board, which shall include provisions to:
 - (i) provide adequate advance written notice to local governments and residents who might be affected by the use of the explosives by:
 - (A) publication of the planned blasting schedule:
 - (I) in a newspaper of general circulation in the locality; and
 - (II) as required in Section 45-1-101; and
 - (B) mailing a copy of the proposed blasting schedule to every resident living within 1/2 mile of the proposed blasting site and by providing daily notice to resident/occupiers in these areas prior to any blasting;
 - (ii) maintain for a period of at least three years and make available for public inspection upon request a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole, and the order and length of delay in the blasts;

- (iii) limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts based upon the physical conditions of the site so as to prevent injury to persons, damage to public and private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of ground or surface water outside the permit area;
 - (iv) require that all blasting operations be conducted by trained and competent persons, and to implement this requirement, the division shall promulgate rules requiring the training, examination, and certification of persons engaging in or directly responsible for blasting or the use of explosives in surface and coal mining operations; and
 - (v) provide that upon the request of a resident or owner of a man-made dwelling or structure within 1/2 mile of any portion of the permitted area, the applicant or permittee shall conduct a preblasting survey of the structures and submit the survey to the division and a copy to the resident or owner making the request, the area of which survey shall be decided by the division and shall include such provisions as promulgated.
- (p) Insure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations; but where the applicant proposes to combine surface mining operations with underground mining operations to assure maximum practical recovery of the mineral resources, the division may grant a variance for specific areas within the reclamation plan from the requirement that reclamation efforts proceed as contemporaneously as practicable to permit underground operations prior to reclamation:
- (i) if the division finds in writing that:
 - (A) the applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations;
 - (B) the proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple disturbance of the surface;
 - (C) the applicant has satisfactorily demonstrated that the plan for the underground mining operations conforms to requirements for underground mining in the jurisdiction and that permits necessary for the underground mining operations have been issued by the appropriate authority;
 - (D) the areas proposed for the variance have been shown by the applicant to be necessary for the implementing of the proposed underground mining operations;
 - (E) no substantial adverse environmental damage, either onsite or offsite, will result from the delay in completion of reclamation as required by this chapter; and
 - (F) provisions for the offsite storage of spoil will comply with Subsection (2)(v);
 - (ii) if the board has adopted specific rules to govern the granting of the variances in accordance with the provisions of this Subsection (2)(p) and has imposed such additional requirements as considered necessary;
 - (iii) if variances granted under this Subsection (2)(p) are to be reviewed by the division not more than three years from the date of issuance of the permit; and
 - (iv) if liability under the bond filed by the applicant with the division pursuant to Section 40-10-15 shall be for the duration of the underground mining operations and until the requirements of this Subsection (2) and Section 40-10-16 have been fully complied with.
- (q) Insure that the construction, maintenance, and postmining conditions of access roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property.

- (r) Refrain from the construction of roads or other access ways up a stream bed or drainage channel or in such proximity to the channel so as to seriously alter the normal flow of water.
- (s) Establish on the regraded areas and all other lands affected, a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area; except that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan.
- (t)
 - (i) Assume the responsibility for successful revegetation, as required by Subsection (2)(s), for a period of five full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with Subsection (2)(s), except in those areas or regions of the state where the annual average precipitation is 26 inches or less, then the operator's assumption of responsibility and liability will extend for a period of 10 full years after the last year of augmented seeding, fertilizing, irrigation, or other work; but when the division approves a long-term intensive agricultural postmining land use, the applicable five or 10 year period of responsibility for revegetation shall commence at the date of initial planting for this long-term intensive, agricultural postmining land use, except when the division issues a written finding approving a long-term, intensive, agricultural postmining land use, as part of the mining and reclamation plan, the division may grant exception to the provisions of Subsection (2)(s); and
 - (ii) on lands eligible for remining, assume the responsibility for successful revegetation for a period of two full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with the applicable standards, except in areas of the state where the average annual precipitation is 26 inches or less, assume the responsibility for successful revegetation for a period of five full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with the applicable standards.
- (u) Protect offsite areas from slides or damage occurring during the surface coal mining and reclamation operations and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area.
- (v) Place all excess spoil material resulting from coal surface mining and reclamation activities in a manner that:
 - (i) spoil is transported and placed in a controlled manner in position for concurrent compaction and in a way to assure mass stability and to prevent mass movement;
 - (ii) the areas of disposal are within the bonded permit areas and all organic matter shall be removed immediately prior to spoil placement;
 - (iii) appropriate surface and internal drainage systems and diversion ditches are used so as to prevent spoil erosion and movement;
 - (iv) the disposal area does not contain springs, natural water courses, or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains in a manner that filtration of the water into the spoil pile will be prevented;
 - (v) if placed on a slope, the spoil is placed upon the most moderate slope among those upon which, in the judgment of the division, the spoil could be placed in compliance with all the requirements of this chapter and shall be placed, where possible, upon or above a natural terrace, bench, or berm, if this placement provides additional stability and prevents mass movement;

- (vi) where the toe of the spoil rests on a downslope, a rock toe buttress of sufficient size to prevent mass movement, is constructed;
 - (vii) the final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses;
 - (viii) design of the spoil disposal area is certified by a qualified professional engineer, and to implement this requirement, the division shall promulgate rules regarding the certification of engineers in the area of spoil disposal design; and
 - (ix) all other provisions of this chapter are met.
 - (w) Meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this chapter, taking into consideration the physical, climatological, and other characteristics of the site.
 - (x) To the extent possible, using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of these resources where practicable.
 - (y) Provide for an undisturbed natural barrier beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for the distance as the division shall determine shall be retained in place as a barrier to slides and erosion.
- (3)
- (a) Where an applicant meets the requirements of Subsections (3)(b) and (c), a permit without regard to the requirement to restore to approximate original contour provided in Subsections (2)(c), (4)(b), and (4)(c) may be granted for the surface mining of coal where the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill (except as provided in this Subsection (3)) by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, and capable of supporting postmining uses in accord with the requirements of this Subsection (3).
 - (b) In cases where an industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use is proposed for the postmining use of the affected land, the division may grant a permit for a surface mining operation of the nature described in Subsection (3)(a) pursuant to procedures and criteria set forth in the rules, including:
 - (i) the applicant's presentation of specific plans for the proposed postmining land use which meet criteria concerning the type of use proposed;
 - (ii) the applicant's demonstration that the proposed use would be consistent with adjacent land uses and existing state and local land use plans and programs and with other requirements of this chapter; and
 - (iii) procedures whereby the division provides the governing body of the unit of general-purpose government in which the land is located and any state or federal agency which the division, in its discretion, determines to have an interest in the proposed use, an opportunity of not more than 60 days to review and comment on the proposed use.
 - (c) All permits granted under the provisions of this Subsection (3) shall be reviewed not more than three years from the date of issuance of the permit, unless the applicant affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.
- (4) The following performance standards shall be applicable to steep-slope surface coal mining and shall be in addition to those general performance standards required by this section; but the provisions of this Subsection (4) shall not apply to those situations in which an operator is mining on flat or gently rolling terrain, on which an occasional steep slope is encountered

through which the mining operation is to proceed, leaving a plain or predominantly flat area or where an operator is in compliance with provisions of Subsection (3):

- (a) Insure that when performing surface coal mining on steep slopes, no debris, abandoned or disabled equipment, spoil material, or waste mineral matter be placed on the downslope below the bench or mining cut; but spoil material in excess of that required for the reconstruction of the approximate original contour under the provisions of Subsection (2)(c) or this Subsection (4) shall be permanently stored pursuant to Subsection 40-10-17(2)(v).
 - (b) Complete backfilling with spoil material shall be required to cover completely the highwall and return the site to the appropriate original contour, which material will maintain stability following mining and reclamation.
 - (c) The operator may not disturb land above the top of the highwall unless the division finds that the disturbance will facilitate compliance with the environmental protection standards of this section; but the land disturbed above the highwall shall be limited to that amount necessary to facilitate this compliance.
 - (d) For the purposes of this Subsection (4), "steep slope" means any slope above 20 degrees or such lesser slope as may be defined by the division after consideration of soil, climate, and other characteristics of an area.
- (5) The board shall promulgate specific rules to govern the granting of variances from the requirement to restore to approximate original contour provided in Subsection (4)(b) pursuant to procedures and criteria set forth in those rules including:
- (a) written request by the surface owner concerning the proposed use;
 - (b) approval of the proposed use as an equal or better economic or public use; and
 - (c) approval of the proposed use as improving the watershed control in the area and as using only such amount of spoil as is necessary to achieve the planned postmining land use.

Amended by Chapter 309, 2009 General Session

Amended by Chapter 388, 2009 General Session

40-10-18 Underground coal mining -- Rules regarding surface effects -- Operator requirements -- Repair or compensation for damage -- Replacement of water.

- (1) The board shall adopt rules directed toward the surface effects of underground coal mining operations that incorporate the requirements provided in this section. In adopting any rules, the board shall consider the distinct difference between surface coal mining and underground coal mining methods.
- (2) Each permit relating to underground coal mining issued pursuant to this chapter shall require the operator to comply with this section.
- (3)
 - (a) Except in those instances where the mining technology used requires planned subsidence in a predictable and controlled manner, the operator shall adopt measures consistent with known technology to:
 - (i) prevent subsidence from causing material damage, to the extent technologically and economically feasible;
 - (ii) maximize mine stability; and
 - (iii) maintain the value and reasonably foreseeable use of the surface lands.
 - (b) Nothing in Subsection (3)(a) shall be construed to prohibit the standard method of room and pillar mining.

- (4) The operator shall seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine working when no longer needed for the conduct of the mining operations.
- (5) The operator shall fill or seal exploratory holes no longer necessary for mining, maximizing to the extent technologically and economically feasible, the return of mine and processing waste, tailings, and any other waste incident to the mining operation, to the mine workings or excavations.
- (6)
 - (a) With respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine workings or excavations, the operator shall stabilize all waste piles created from current operations through construction in compacted layers, including the use of incombustible and impervious materials, if necessary.
 - (b) The operator shall assure that:
 - (i) the leachate will not degrade surface or ground waters below water quality standards established pursuant to applicable federal and state law;
 - (ii) the final contour of the waste accumulation will be compatible with natural surroundings; and
 - (iii) the site is stabilized and revegetated according to the provisions of this section.
- (7) In accordance with the standards and criteria developed pursuant to Section 40-10-17, the operator shall design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes that are used either temporarily or permanently as dams or embankments.
- (8) The operator shall establish on regraded areas and all other lands affected, a diverse and permanent vegetative cover that is:
 - (a) capable of self-regeneration and plant succession; and
 - (b) at least equal in extent of cover to the natural vegetation of the area.
- (9) The operator shall protect offsite areas from damages which may result from the mining operations.
- (10) The operator shall eliminate fire hazards and other conditions which constitute a hazard to health and safety of the public.
- (11) The operator shall minimize the disturbances of the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quantity of water in surface and groundwater systems both during and after coal mining operations and during reclamation by:
 - (a) avoiding acid or other toxic mine drainage by such measures as, but not limited to:
 - (i) preventing or removing water from contact with toxic-producing deposits;
 - (ii) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses; or
 - (iii) casing, sealing, or otherwise managing boreholes, shafts, and wells to keep acid or other toxic drainage from entering ground and surface waters;
 - (b) conducting surface coal mining operations to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event shall these contributions be in excess of requirements set by applicable state or federal law; and
 - (c) avoiding channel deepening or enlargement in operations requiring the discharge of water from mines.
- (12)
 - (a) The standards established under Section 40-10-17 for surface coal mining operations shall apply to:

- (i) the construction of new roads or the improvement or use of existing roads to gain access to the site of activities conducted on the surface of lands in connection with an underground coal mine and for haulage;
 - (ii) repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to activities conducted on the surface of land in connection with an underground coal mine; and
 - (iii) other surface impacts of underground coal mining not specified in this section.
- (b) The division shall make the modification in the requirements imposed by Subsection (12)(a) as are necessary to accommodate the distinct difference between surface and underground coal mining methods.
- (13) To the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of these resources where practicable.
- (14) The operator shall locate openings for all new drift mines working acid producing or iron producing coal seams in a manner as to prevent a gravity discharge of water from the mine.
- (15)
- (a) Underground coal mining operations conducted after October 24, 1992, shall be subject to the requirements specified in Subsections (15)(b) and (c).
 - (b)
 - (i) The permittee shall promptly repair, or compensate for, material damage resulting from subsidence caused to any occupied residential dwelling and related structures or noncommercial building due to underground coal mining operations.
 - (ii) Repair of damage will include rehabilitation, restoration, or replacement of the damaged occupied residential dwelling and related structures or noncommercial building.
 - (iii) Compensation shall be provided to the owner of the damaged occupied residential dwelling and related structures or noncommercial building and will be in the full amount of the diminution in value resulting from the subsidence.
 - (iv) Compensation may be accomplished by the purchase, prior to mining, of a noncancellable premium prepaid insurance policy.
 - (c) Subject to the provisions of Section 40-10-29, the permittee shall promptly replace any state-appropriated water in existence prior to the application for a surface coal mining and reclamation permit, which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations.
 - (d) Nothing in this Subsection (15) shall be construed to prohibit or interrupt underground coal mining operations.
 - (e) Within one year after the date of enactment of this Subsection (15), the board shall adopt final rules to implement this Subsection (15).

Amended by Chapter 324, 2010 General Session

40-10-18.1 Suspension of underground mining upon finding of immediate danger to inhabitants at surface.

In order to protect the stability of the land, the board shall suspend underground coal mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if, after proper notice and hearing, there is a finding of imminent danger to inhabitants of the urbanized areas, cities, towns, and communities.

Enacted by Chapter 49, 1997 General Session

40-10-18.2 Applicability of other chapter provisions.

The provisions of this chapter relating to permits, sureties, bonds, inspections, and enforcement, public review, and administrative and judicial review shall be applicable to surface operations and surface impacts incident to an underground coal mine with those modifications to the permit application requirements, permit approval or denial procedures, and bond requirements as are necessary to accommodate the distinct difference between surface and underground coal mining methods.

Enacted by Chapter 49, 1997 General Session

40-10-19 Information provided by permittees to division -- Inspections by division -- Signs required at operations entrances -- Violations reported by reclamation officers -- Copies of records and reports available to public.

- (1) For the purpose of developing, administering, and enforcing any permit under this chapter, or of determining whether any person is in violation of any requirement of this chapter, the division shall require any permittee to provide information relative to surface coal mining and reclamation operations as the division deems reasonable and necessary in the division's rules.
- (2) The authorized representatives of the division, without advance notice and upon presentation of appropriate credentials:
 - (a) shall have the right of entry into, upon, or through any surface coal mining and reclamation operations or any premises in which any records required to be maintained under Subsection (2) are located; and
 - (b) may at reasonable times, and without delay, have access to and copy any records, inspect any monitoring equipment or method of operation required under this chapter. As required by Subsection 40-8-17(2), this entry and access are conditions to obtaining an approved state permit to conduct surface mining operations.
- (3) The inspections by the division shall:
 - (a) occur on an irregular basis averaging not less than one partial inspection per month and one complete inspection per calendar quarter for the surface coal mining and reclamation operation covered by each permit;
 - (b) occur without prior notice to the permittee or his agents or employees except for necessary onsite meetings with the permittee; and
 - (c) include the filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this chapter.
- (4) Each permittee shall conspicuously maintain at the entrances to the surface coal mining and reclamation operations a clearly visible sign which sets forth the names, business address, and phone number of the permittee and the permit number of the surface coal mining and reclamation operations.
- (5) Each reclamation officer, upon detection of each violation of any requirement of this chapter, shall forthwith inform the operator in writing and shall report in writing the violation to the division.
- (6) Copies of any records, reports, inspection materials, or information obtained under this chapter by the division shall be made immediately available to the public.

Amended by Chapter 219, 1994 General Session

40-10-20 Civil penalty for violation of chapter -- Informal conference -- Public hearing -- Contest of violation or amount of penalty -- Collection -- Criminal penalties -- Civil penalty for failure to correct violation.

- (1)
 - (a) Any permittee who violates any permit condition or other provision of this chapter may be assessed a civil penalty by the division. If the violation leads to the issuance of a cessation order under Section 40-10-22, the civil penalty shall be assessed.
 - (b)
 - (i) The penalty may not exceed \$5,000 for each violation.
 - (ii) Each day of a continuing violation may be deemed a separate violation for purposes of the penalty assessments.
 - (c) In determining the amount of the penalty, consideration shall be given to:
 - (i) the permittee's history of previous violations at the particular surface coal mining operation;
 - (ii) the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public;
 - (iii) whether the permittee was negligent; and
 - (iv) the demonstrated good faith of the permittee in attempting to achieve rapid compliance after notification of the violation.
- (2)
 - (a) Within 30 days after the issuance of a notice or order charging that a violation of this chapter has occurred, the division shall inform the permittee of the proposed assessment.
 - (b) The person charged with the penalty shall then have 30 days to pay the proposed assessment in full, or request an informal conference before the division.
 - (c) The informal conference held by the division may address either the amount of the proposed assessment or the fact of the violation, or both.
 - (d) If the permittee who requested the informal conference and participated in the proceedings is not in agreement with the results of the informal conference, the permittee may, within 30 days of receipt of the decision made by the division in the informal conference, request a hearing before the board.
- (e)
 - (i) Prior to any review of the proposed assessment or the fact of a violation by the board, and within 30 days of receipt of the decision made by the division in the informal conference, the permittee shall forward to the division the amount of the proposed assessment for placement in an escrow account.
 - (ii) If the operator fails to forward the amount of the penalty to the division within 30 days of receipt of the results of the informal conference, the operator waives any opportunity for further review of the fact of the violation or to contest the amount of the civil penalty assessed for the violation.
 - (iii) If, through administrative or judicial review, it is determined that no violation occurred or that the amount of the penalty should be reduced, the division shall within 30 days remit the appropriate amount to the operator with interest accumulated.
- (3)
 - (a) A civil penalty assessed by the division shall be final only after the person charged with a violation described under Subsection (1) has been given an opportunity for a public hearing.
 - (b) If a public hearing is held, the board shall make findings of fact and shall issue a written decision as to the occurrence of the violation and the amount of the penalty which is warranted, incorporating, when appropriate, an order requiring that the penalty be paid.

- (c) When appropriate, the board shall consolidate the hearings with other proceedings under Section 40-10-22.
- (d) Any hearing under this section shall be of record and shall be conducted pursuant to board rules governing the proceedings.
- (e) If the person charged with a violation fails to avail himself of the opportunity for a public hearing, a civil penalty shall be assessed by the division after the division:
 - (i) has determined:
 - (A) that a violation did occur; and
 - (B) the amount of the penalty which is warranted; and
 - (ii) has issued an order requiring that the penalty be paid.
- (4) Civil penalties owed under this chapter may be recovered in a civil action brought by the attorney general of Utah at the request of the board in any appropriate district court of the state.
- (5) Any person who willfully and knowingly violates a condition of a permit issued pursuant to this chapter or fails or refuses to comply with any order issued under Section 40-10-22 or any order incorporated in a final decision issued by the board under this chapter, except an order incorporated in a decision under Subsection (3), shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year, or both.
- (6) Whenever a corporate permittee violates a condition of a permit issued pursuant to this chapter or fails or refuses to comply with any order incorporated in a final decision issued by the board under this chapter, except an order incorporated in a decision issued under Subsection (3), any director, officer, or agent of the corporation who willfully and knowingly authorized, ordered, or carried out the violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under Subsections (1) and (5).
- (7) Whoever knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter or any order or decision issued by the board under this chapter shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year, or both.
- (8)
 - (a) Any operator who fails to correct a violation for which a notice or cessation order has been issued under Subsection 40-10-22(1) within the period permitted for its correction shall be assessed a civil penalty of not less than \$750 for each day during which the failure or violation continues.
 - (b) The period permitted for correction of a violation for which a notice of cessation order has been issued under Subsection 40-10-22(1) may not end until:
 - (i) the entry of a final order by the board, in the case of any review proceedings initiated by the operator in which the board orders, after an expedited hearing, the suspension of the abatement requirements of the citation after determining that the operator will suffer irreparable loss or damage from the application of those requirements; or
 - (ii) the entry of an order of the court, in the case of any review proceedings initiated by the operator wherein the court orders the suspension of the abatement requirements of the citation.

Amended by Chapter 99, 1997 General Session

40-10-21 Civil action to compel compliance with chapter -- Jurisdiction -- Venue -- Division and board as parties -- Court costs -- Security when temporary restraining order or injunction sought -- Other rights not affected -- Action for damages.

- (1)
 - (a) Except as provided in Subsection (2), any person having an interest which is or may be adversely affected may commence a civil action on the person's own behalf to compel compliance with this chapter against:
 - (i) the state or any other governmental instrumentality or agency to the extent permitted by the 11th Amendment to the United States Constitution or Title 63G, Chapter 7, Governmental Immunity Act of Utah, which is alleged to be in violation of the provisions of this chapter or of any rule, order, or permit issued pursuant to it;
 - (ii) any person who is alleged to be in violation of any rule, order, or permit issued pursuant to this chapter; or
 - (iii) the division or board where there is alleged a failure of the division or board to perform any act or duty under this chapter which is not discretionary with the division or with the board.
 - (b) The district courts shall have jurisdiction without regard to the amount in controversy or the citizenship of the parties.
- (2) No action may be commenced:
 - (a) under Subsection (1)(a)(i) or (ii):
 - (i) prior to 60 days after the plaintiff has given notice in writing of the violation to the division and to any alleged violator; or
 - (ii) if the attorney general has commenced and is diligently prosecuting a civil action in a court of the state to require compliance with the provisions of this chapter, or any rule, order, or permit issued pursuant to this chapter; or
 - (b) under Subsection (1)(a)(iii) prior to 60 days after the plaintiff has given notice in writing of the action to the board, in the manner as the board prescribes by rule, except that the action may be brought immediately after the notification in the case where the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.
- (3)
 - (a) Any action concerning a violation of this chapter or the rules promulgated under it may be brought only in the judicial district in which the surface coal mining operation complained of is located.
 - (b) In the action, the division and board, if not a party, may intervene as a matter of right.
- (4)
 - (a) The court, in issuing any final order in any action brought pursuant to Subsection (1), may award costs of litigation, including attorney and expert witness fees, to any party whenever the court determines that award is appropriate.
 - (b) The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Utah Rules of Civil Procedure.
- (5) Nothing in this section may restrict any right which any person, or class of persons, has under any statute or common law to seek enforcement of any of the provisions of this chapter and the rules promulgated under it, or to seek any other relief, including relief against the division and board.
- (6) Any person who is injured in his person or property through the violation by an operator of any rule, order, or permit issued pursuant to this chapter may bring an action for damages, including reasonable attorney and expert witness fees, only in the judicial district in which the surface coal mining operation complained of is located. Nothing in this Subsection (6) shall affect the rights established by or limits imposed under Utah workmen's compensation laws.

Amended by Chapter 382, 2008 General Session

40-10-22 Violation of chapter or permit conditions -- Inspection -- Cessation order, abatement notice, or show cause order -- Suspension or revocation of permit -- Review -- Costs assessed against either party.

- (1)
- (a) Whenever, on the basis of any information available, including receipt of information from any person, the division has reason to believe that any person is in violation of any requirement of this chapter or any permit condition required by this chapter, the division shall immediately order inspection of the surface coal mining operation at which the alleged violation is occurring, unless the information available to the division is a result of a previous inspection of the surface coal mining operation. When the inspection results from information provided to the division by any person, the division shall notify that person when the inspection is proposed to be carried out, and that person shall be allowed to accompany the inspector during the inspection.
 - (b) When, on the basis of any inspection, the division determines that any condition or practices exist, or that any permittee is in violation of any requirement of this chapter or any permit condition required by this chapter, which condition, practice, or violation also creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the division shall immediately order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the condition, practice, or violation. The cessation order shall remain in effect until the division determines that the condition, practice, or violation has been abated, or until modified, vacated, or terminated by the division pursuant to Subsection (1)(e). Where the division finds that the ordered cessation of surface coal mining and reclamation operations, or any portion of same, will not completely abate the imminent danger to health or safety of the public or the significant imminent environmental harm to land, air, or water resources, the division shall, in addition to the cessation order, impose affirmative obligations on the operator requiring him to take whatever steps the division deems necessary to abate the imminent danger or the significant environmental harm.
 - (c) When, on the basis of an inspection, the division determines that any permittee is in violation of any requirement of this chapter or any permit condition required by this chapter, but the violation does not create an imminent danger to the health or safety of the public or cannot be reasonably expected to cause significant, imminent environmental harm to land, air, or water resources, the division shall issue a notice to the permittee or his agent fixing a reasonable time but not more than 90 days for the abatement of the violation and providing opportunity for conference before the division. If upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown, and upon the written finding of the division, the division finds that the violation has not been abated, it shall immediately order a cessation of surface coal mining and reclamation operations or the portion of same relevant to the violation. The cessation order shall remain in effect until the division determines that the violation has been abated or until modified, vacated, or terminated by the division pursuant to Subsection (1)(e). In the order of cessation issued by the division under this subsection, the division shall determine the steps necessary to abate the violation in the most expeditious manner possible and shall include the necessary measures in the order.
 - (d) When on the basis of an inspection the division determines that a pattern of violations of any requirements of this chapter or any permit conditions required by this chapter exists or has existed, and if the division also finds that these violations are caused by the

unwarranted failure of the permittee to comply with any requirements of this chapter or any permit conditions or that these violations are willfully caused by the permittee, the division shall initiate agency action by requesting the board to issue an order to show cause to the permittee as to why the permit should not be suspended or revoked and shall provide opportunity for a public hearing. If a hearing is requested, the board shall give notice in accordance with the rules of practice and procedure of the board. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the board shall immediately enter an order to suspend or revoke the permit.

- (e) Notices and orders issued under this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the surface coal mining and reclamation operation to which the notice or order applies. Each notice or order issued under this section shall be given promptly to the permittee or his agent by the division, and the notices and orders shall be in writing and shall be signed by the director, or his authorized representative who issues such notice or order. Any notice or order issued under this section may be modified, vacated, or terminated by the division, but any notice or order issued under this section which requires cessation of mining by the operator shall expire within 30 days of actual notice to the operator unless a conference is held before the division.

(2)

- (a) The division may request the attorney general to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court for the district in which the surface coal mining and reclamation operation is located or in which the permittee of the operation has his principal office, whenever such permittee or his agent:
 - (i) violates or fails or refuses to comply with any order or decision issued under this chapter;
 - (ii) interferes with, hinders, or delays the division or its authorized representatives in carrying out the provisions of this chapter;
 - (iii) refuses to admit the authorized representatives to the mine;
 - (iv) refuses to permit inspection of the mine by the authorized representative;
 - (v) refuses to furnish any information or report requested by the division in furtherance of the provisions of this chapter; or
 - (vi) refuses to permit access to and copying of such records as the division determines necessary in carrying out the provisions of this chapter.
- (b) The district court shall have jurisdiction to provide such relief as may be appropriate. Any relief granted by the district court to enforce an order under Subsection (2)(a)(i) shall continue in effect until the completion or final termination of all proceedings for review of that order under this chapter, unless, prior to this completion or termination, the Utah Supreme Court on review grants a stay of enforcement or sets aside or modifies the board's order which is being appealed.

(3)

- (a) A permittee issued a notice or order by the division pursuant to the provisions of Subsections (1)(b) and (1)(c), or any person having an interest which may be adversely affected by the notice or order, may initiate board action by requesting a hearing for review of the notice or order within 30 days of receipt of it or within 30 days of its modification, vacation, or termination. Upon receipt of this application, the board shall cause such investigation to be made as it deems appropriate. The investigation shall provide an opportunity for a public hearing at the request of the applicant or the person having an interest which is or may be adversely affected to enable the applicant or that person to present information relating to the

issuance and continuance of the notice or order or the modification, vacation, or termination of it. The filing of an application for review under this subsection shall not operate as a stay of any order or notice.

- (b) The permittee and other interested persons shall be given written notice of the time and place of the hearing in accordance with the rules of practice and procedure of the board, but the notice may not be less than five days prior to the hearing. This hearing shall be of record and shall be subject to judicial review.
- (c) Pending completion of the investigation and hearing required by this section, the applicant may file with the board a written request that the board grant temporary relief from any notice or order issued under this section, together with a detailed statement giving the reasons for granting this relief. The board shall issue an order or decision granting or denying this relief expeditiously; and where the applicant requests relief from an order for cessation of coal mining and reclamation operations issued pursuant to Subsections (1)(b) or (1)(c), the order or decision on this request shall be issued within five days of its receipt. The board may grant the relief under such conditions as it may prescribe, if a hearing has been held in the locality of the permit area on the request for temporary relief and the conditions of Subsections 40-10-14(4)(a), 40-10-14(4)(b), and 40-10-14(4)(c) are met.
- (d) Following the issuance of an order to show cause as to why a permit should not be suspended or revoked pursuant to this section, the board shall hold a public hearing after giving notice in accordance with the rules of practice and procedure of the board. Within 60 days following the hearing, the board shall issue and furnish to the permittee and all other parties to the hearing an order containing the basis for its decision on the suspension or revocation of the permit. If the board revokes the permit, the permittee shall immediately cease surface coal mining operations on the permit area and shall complete reclamation within a period specified by the board, or the board shall declare as forfeited the performance bonds for the operation.
- (e) Whenever an order is entered under this section or as a result of any adjudicative proceeding under this chapter, at the request of any person, a sum equal to the aggregate amount of all costs and expenses (including attorney fees) as determined by the board to have been reasonably incurred by that person in connection with his participation in the proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review, or the board, resulting from adjudicative proceedings, deems proper.
- (f) Action by the board taken under this section or any other provision of the state program shall be subject to judicial review by the Utah Supreme Court as prescribed in Section 78A-3-102, but the availability of this review shall not be construed to limit the operation of the citizen suit in Section 40-10-21, except as provided in this latter section.

Amended by Chapter 3, 2008 General Session

40-10-23 Time for bringing criminal proceeding.

No criminal proceeding based upon violation of this chapter, or any rule, regulation, or order issued under this chapter, shall be commenced or maintained unless it shall have been commenced within five years from the date of the alleged violation.

Enacted by Chapter 145, 1979 General Session

40-10-24 Determination of unsuitability of lands for surface coal mining -- Petition -- Public hearing -- Detailed statement by division.

- (1)
- (a) The board and division, with the advice of appropriate federal, state, and local agencies, shall establish a planning process enabling objective decisions based upon competent and scientifically sound data and information as to which, if any, land areas of the state are unsuitable for all or certain types of surface coal mining operations pursuant to the standards set forth in Subsections (1)(b) and (1)(c). This designation shall not prevent the mineral exploration pursuant to this chapter of any area so designated.
 - (b) Upon petition pursuant to Subsection (2), the board shall designate an area as unsuitable for all or certain types of surface coal mining operations if the board and division determine that reclamation pursuant to the requirements of this chapter is not technologically and economically feasible.
 - (c) Upon petition pursuant to Subsection (2), a surface area may be designated unsuitable for certain types of surface coal mining operations if these operations will:
 - (i)
 - (A) be incompatible with existing state or local land use plans or programs;
 - (B) affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific, and aesthetic values and natural systems;
 - (C) affect renewable resource lands in which the operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, and the lands to include aquifers and aquifer recharge areas; or
 - (D) affect natural hazard lands in which the operations could substantially endanger life and property, these lands to include areas subject to frequent flooding and areas of unstable geology; and
 - (ii) where the criteria listed in Subsection (1)(c)(i) have been balanced against the economic impact of the designation in a cost-benefit analysis.
 - (d) Determinations of the unsuitability of lands for surface coal mining, as provided for in this section, shall be integrated as closely as possible with present and future land use planning and regulation processes at the state and local levels.
 - (e) The requirements of this section shall not apply to lands on which surface coal mining operations are being conducted:
 - (i) on August 3, 1977;
 - (ii) under a permit issued pursuant to this chapter; or
 - (iii) where substantial legal and financial commitments in these operations were in existence prior to January 1, 1977.
- (2)
- (a) Any person having an interest which is or may be adversely affected shall have the right to petition the board to have an area designated as unsuitable for surface coal mining operations or to have this designation terminated.
 - (b) The petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within 10 months after receipt of the petition the board shall hold a public hearing, after appropriate notice and publication of the date, time, and location of the hearing. After a person having an interest which is or may be adversely affected has filed a petition and before the hearing, as required by this subsection, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. Within 60 days after the hearing, the board shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition and the

reasons for it. If all the petitioners stipulate agreement prior to the requested hearing and withdraw their request, the hearing need not be held.

- (3) Prior to any land areas being designated as unsuitable for surface coal mining operations, a detailed statement shall be prepared by the division on:
 - (a) the potential coal resources of the area;
 - (b) the demand for coal resources; and
 - (c) the impact of the designation on the environment, the economy, and the supply of coal.
- (4) After August 3, 1977, and subject to valid existing rights, no surface coal mining operations, except those which exist on that date, shall be permitted:
 - (a) on any lands where this activity is precluded by Public Law 95-87;
 - (b) on any lands which will adversely affect any publicly owned park or places included in the National Register of Historic Sites, unless approved jointly by the division and the federal, state, or local agency with jurisdiction over the park or the historic site;
 - (c) within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join this right-of-way line and except that the division may permit these roads to be relocated or the area affected to lie within 100 feet of the road, if after public notice and opportunity for public hearing in the locality a written finding is made that the interests of the public and the landowners affected thereby will be protected; or
 - (d) within 300 feet from any occupied dwelling, unless waived by the owner of same, nor within 300 feet from any public building, school, church, community, institutional building, or public park, or within 100 feet of a cemetery.

Amended by Chapter 219, 1994 General Session

40-10-25 Abandoned mine reclamation program -- Expenditure priorities -- Eligible lands and water -- Requirements for use of funds for reclamation or drainage abatement -- Priority sites -- Effect of release of bond or deposit.

- (1) Grants made to the state by the secretary of the United States Department of Interior for the administration of an abandoned mine reclamation program and money of the Abandoned Mine Reclamation Fund created in Section 40-10-25.1 shall be used by the division in accordance with Sections 40-10-25 through 40-10-28.1.
- (2) The expenditure of money shall reflect the following priorities:
 - (a) the protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices;
 - (b) the protection of public health, safety, and general welfare from adverse effects of coal mining practices;
 - (c) the restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity;
 - (d) the protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, and recreation and conservation facilities adversely affected by coal mining practices; and
 - (e) the development of publicly owned land adversely affected by coal mining practices, including land acquired as provided in this section for recreation and historic purposes, conservation, reclamation purposes, and open space benefits.

- (3) Except as provided in Section 40-10-28.1, lands and water eligible for reclamation or drainage abatement expenditures under this section are those which were mined for coal or affected by coal mining, wastebanks, coal processing, or other coal mining processes and:
 - (a) abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under state or federal laws; or
 - (b) left in an inadequate reclamation status and meet the criteria of Subsection (4)(a) or (b).
- (4) Funds made available under this section may be used for reclamation or drainage abatement at a site referred to in Subsection (3) if:
 - (a)
 - (i) operations occurred on the site during the period beginning August 4, 1977, and ending before January 21, 1981; and
 - (ii) any funds for reclamation or abatement which are available pursuant to a loan or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site; or
 - (b)
 - (i) operations occurred on the site during the period beginning on August 4, 1977, and ending on or before November 5, 1990; and
 - (ii) the surety of the mining operator became insolvent during that period, and as of November 5, 1990, funds immediately available from proceedings relating to the insolvency, or from any financial guarantee or other source, are not sufficient to provide for adequate reclamation or abatement at the site.
- (5) In determining which sites to reclaim, priority shall be given to those sites which are in the immediate vicinity of a residential area or which have an adverse economic impact upon a local community.
- (6)
 - (a) Surface coal mining operations on lands eligible for remining will not affect their eligibility for reclamation and restoration under this chapter after the release of the bond or deposit for the operation as provided under Section 40-10-16.
 - (b) When a bond or deposit for a surface coal mining operation on lands eligible for remining is forfeited, funds available under Section 40-10-25 may be used, if the amount of the bond or deposit is not sufficient to provide for adequate reclamation or abatement.
 - (c) Regardless of the requirements of Subsections (6)(a) and (b), the director of the division may expend money under Section 40-10-25.1 for any emergency requiring immediate reclamation.

Amended by Chapter 99, 1997 General Session

40-10-25.1 Abandoned Mine Reclamation Fund created -- Contents -- Use of money.

- (1)
 - (a) There is created an expendable special revenue fund known as the "Abandoned Mine Reclamation Fund."
 - (b)
 - (i) The fund shall consist of the money specified in Subsections (2) and (3).
 - (ii) The money of Subsection (2) shall be segregated from the money of Subsection (3).
- (2)
 - (a) Money received by the state from the following sources shall be deposited into the Abandoned Mine Reclamation Fund:
 - (i) recovered liens filed against privately owned land as provided by Section 40-10-28;
 - (ii) fees for the use of reclaimed lands as provided by Section 40-10-28;

- (iii) fines collected for violations of this chapter or any rule or order issued under this chapter;
 - (iv) donations designated for reclamation of abandoned mines; and
 - (v) interest credited to the fund pursuant to Subsection (2)(b).
 - (b) Money received under Subsection (2)(a) shall be invested by the state treasurer and the income earned shall be credited to the Abandoned Mine Reclamation Fund, except interest income earned over \$19,000 per year shall be credited to the General Fund.
 - (c) The division may at any time expend money deposited into the fund under Subsection (2)(a) to accomplish the purposes of the abandoned mine reclamation program.
- (3)
- (a)
 - (i) Money received by the state from the secretary of the United States Department of Interior, which is granted as special state set-aside money in accordance with 30 U.S.C. Sec. 1232 et seq. shall be deposited in the Abandoned Mine Reclamation Fund.
 - (ii) Money deposited into the fund under Subsection (3)(a)(i) shall be invested by the state treasurer and the income earned shall be credited to the Abandoned Mine Reclamation Fund.
 - (b) After August 3, 1992, the division shall use the money deposited into the Abandoned Mine Reclamation Fund under this Subsection (3) to accomplish the purposes set forth in Sections 40-10-25 through 40-10-28.1.
 - (c) Except as provided in Subsection (3)(d), the money deposited into the Abandoned Mine Reclamation Fund under this Subsection (3) shall be made available to the division through legislative appropriations.
 - (d) The director of the division with the concurrence of the board may at any time expend money deposited into the Abandoned Mine Reclamation Fund under Subsection (3)(a) for any emergency requiring immediate reclamation.

Amended by Chapter 400, 2013 General Session

40-10-25.2 Liability limitation for abandoned mine reclamation.

- (1) The state is not liable for any costs or damages resulting from action taken or not taken to carry out an abandoned mine reclamation plan.
- (2)
- (a) Subsection (1) does not preclude liability for costs or damages resulting from gross negligence or intentional misconduct by the state.
 - (b) For purposes of this section, reckless, willful, or wanton misconduct constitutes gross negligence.

Enacted by Chapter 225, 1991 General Session

40-10-26 State reclamation plan and annual projects submitted to Secretary of Interior -- Contents of plan -- Annual support and implementation requests -- Costs for proposed projects.

- (1) The division will submit to the Secretary of the Interior a state reclamation plan and annual projects to carry out the purposes of this section.
- (2) The state reclamation plan shall generally identify the areas to be reclaimed, the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying

projects to be funded, and the legal authority and programmatic capability to perform this work in conformance with the provisions of this chapter.

- (3) The division shall have the authority to submit an annual application for the support of the state program and implementation of specific reclamation projects to the Secretary of the Interior. These annual requests shall include such information as may be requested by the Secretary.
- (4) The division shall have the authority to provide annual and other reports required by the Secretary of the Interior to accompany the annual request for support required in Subsection (3).
- (5) The costs for each proposed project under this section shall include: actual construction costs, actual operation and maintenance costs of permanent facilities, planning and engineering costs, construction inspection costs, and other necessary administrative expenses.

Enacted by Chapter 145, 1979 General Session

40-10-27 Entry upon land adversely affected by past coal mining practices -- Conducting of studies or exploratory work -- State acquisition of land -- Lien -- Waste disposal fund -- Water pollution control and treatment plants.

- (1)
 - (a) If the board, after notice and hearing, makes a finding of fact as provided in Subsection (1) (b), the agents, employees, or contractors of the division shall have the right to enter property adversely affected by past coal mining practices and any other property to have access to property adversely affected by past coal mining practices to do whatever is necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects.
 - (b) The board shall find that:
 - (i) land or water resources have been adversely affected by past coal mining practices;
 - (ii) the adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and
 - (iii) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices:
 - (A) are not known;
 - (B) are not readily available; or
 - (C) will not give permission for the state or its political subdivisions, their agents, employees, or contractors to enter upon the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.
 - (c) Notice of the division's right to enter the property shall be:
 - (i) if the owners are known, given by mail; and
 - (ii) if the owners are not known:
 - (A) posted upon the premises; and
 - (B) advertised:
 - (I) once in a newspaper of general circulation in the county in which the land lies; and
 - (II) as required in Section 45-1-101.
 - (d) This entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and may not be construed as an act of condemnation of property nor of trespass on it.
 - (e) The money expended for this work and the benefits accruing to the premises entered upon shall be chargeable against the land and shall mitigate or offset any claim in or any action brought by any owner of any interest in these premises for any alleged damages by virtue of the entry.

- (f) This Subsection (1) is not intended to create new rights of action or eliminate existing immunities.
- (2)
 - (a) The agents, employees, or contractors of the division may enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of these adverse effects.
 - (b) This entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and may not be construed as an act of condemnation of property or trespass on it.
- (3) The state may acquire any land by purchase, donation, or condemnation which is adversely affected by past coal mining practices if the board, after notice and hearing, determines that acquisition of this land is necessary to successful reclamation and that:
 - (a) the acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will serve recreation and historic purposes, conservation and reclamation purposes, or provide open space benefits; and
 - (b)
 - (i) permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; or
 - (ii) acquisitions of coal refuse disposal sites and all coal refuse on the sites will serve the purposes of this chapter or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.
- (4)
 - (a) Title to all lands acquired under this section shall be in the name of the state.
 - (b) The price paid for land acquired under this section shall reflect the market value of the land as adversely affected by past coal mining practices.
- (5)
 - (a) If land acquired under this section is considered suitable for industrial, commercial, residential, or recreational development, the division, in conjunction with the Division of Forestry, Fire, and State Lands, may sell this land by public sale under a system of competitive bidding, at not less than fair market value, and under any other rules promulgated to insure that the land is put to proper use consistent with local and state land use plans.
 - (b)
 - (i) The state, when requested after appropriate public notice, shall hold a public hearing with the appropriate notice, in the counties or appropriate political subdivisions of the state in which lands acquired under this section are located.
 - (ii) The hearing shall be held at a time which shall afford local citizens and governments the maximum opportunity to participate in the decision concerning the use or disposition of the lands after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.
- (6)
 - (a) The state, through the division and the Division of Forestry, Fire, and State Lands, shall have the authority to accept lands acquired and reclaimed by the Secretary of the Interior pursuant to Section 407(h) of Public Law 95-87.
 - (b) The division has the authority to accept grants from the Secretary to carry out the purposes of Section 407(h) of Public Law 95-87.
- (7)

- (a) Within six months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past coal mining practices on privately owned land, the division shall itemize the money expended and may file a statement of those expenses in the office of the county recorder of the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal mining practices if the money expended results in a significant increase in property value.
 - (b) This statement shall constitute a lien upon the land described in it.
 - (c) The lien may not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.
 - (d) A lien may not be filed against the property of any person, in accordance with this subsection who owned the surface prior to May 2, 1977, and who neither consented to nor participated in nor exercised control over the mining operation which necessitated the reclamation performed.
- (8)
- (a) The landowner may proceed to petition within 60 days after the filing of the lien to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.
 - (b) The amount reported to be the increase in value of the premises shall constitute the amount of the lien and shall be recorded with the statement provided for in Subsection (7).
 - (c) Any party aggrieved by the decision may appeal as provided by law.
- (9)
- (a) The lien provided in this section shall be recorded in the office of the county recorder of the county in which the land lies.
 - (b) The statement shall constitute a lien upon the land as of the date of the expenditure of the money and shall have priority as a lien second only to the lien of real estate taxes imposed upon the land.
- (10)
- (a) The division may fill any voids, seal any abandoned tunnels, shafts, and entryways, and reclaim surface impacts of underground or surface mines which the division determines could endanger life and property, constitute a hazard to the public health and safety, or degrade the environment.
 - (b) The division may make expenditures and carry out the purposes of this section without regard to the provisions of Subsections 40-10-25(2) and (3) only after all reclamation with respect to abandoned coal lands or coal development impacts have been met, except for those reclamation projects relating to the protection of the public health or safety.
 - (c) In those instances where mine waste piles are being reworked for conservation purposes, the incremental costs of disposing of the wastes from these operations by filling voids and sealing tunnels may be eligible for funding if the disposal of these wastes meets the purposes of this section.
 - (d) The division may acquire by purchase, donation, easement, or otherwise those interests in land it determines necessary to carry out the provisions of this section.
- (11)
- (a) The division may request the attorney general, who is hereby authorized to initiate, in addition to any other remedies provided for in this chapter, in any court of competent jurisdiction, an action in equity for an injunction to restrain any interference with the exercise of the right to enter or to conduct any work provided in this section.

- (b)
 - (i) The division, in conjunction with appropriate state agencies as determined in the rules, may construct and operate plants for the control and treatment of water pollution resulting from mine drainage.
 - (ii) The extent of this control and treatment of water pollution may be dependent upon the ultimate use of the water.
 - (iii) This Subsection (11) may not be construed to repeal or supersede any portion of the federal Water Pollution Control Act, 33 U.S.C. Sec. 1151 et seq., and no control or treatment under this Subsection (11) shall in any way be less than that required under the federal Water Pollution Control Act.
 - (iv) The construction of a plant may include major interceptors and other facilities appurtenant to the plant.
- (c) The division may transfer funds to other appropriate state agencies, in order to carry out the reclamation activities authorized by this chapter.

Amended by Chapter 342, 2011 General Session

40-10-28 Recovery of reclamation costs -- Lien against reclaimed land.

- (1) All reclamation costs of each project shall be recovered to the extent possible, taking into consideration the objectives of the project and the criteria under which the project was selected for reclamation work, in accordance with the following:
 - (a) All possible reclamation costs shall be recovered at the time of first sale of land following reclamation as follows:
 - (i) Whenever reclaimed land is sold at a value higher than that at which the unreclaimed land was appraised immediately prior to reclamation, the difference between the pre and post reclamation values shall be payable to the fund to mitigate or offset the cost of the reclamation program.
 - (ii) When land is to be sold to a state or local government for public purposes, the amount of the sale price may be less than the market value after reclamation but may not be less than the actual cost of the purchase of the property by the state plus the costs of reclamation.
 - (b)
 - (i) Special charges for use of land may be levied, including recreation fees, leases, livestock grazing fees, or other land use fees. These fees may be waived by the division when deemed to be to the public benefit.
 - (ii) These user fees, however, shall be charged to all users of the reclaimed lands if the uses result in financial or personal benefits to persons, corporations, or profit-making organizations.
 - (iii) All fees collected, less operating and maintenance expenses, shall be deposited in the fund.
- (2)
 - (a) The division shall place a lien against reclaimed land, the market value of which has increased as a result of the reclamation work, except where the surface owner owned the land prior to May 2, 1977, and neither consented to nor participated in nor exercised control over the mining operation which necessitated the reclamation work.
 - (b) The division may waive the requirement of a lien where land is owned by a state, local government, or municipality or when owned and operated for a charitable public purpose by a nonprofit charitable organization.

- (c) The amount of the lien shall consist of the money expended for the reclamation work but shall not exceed the resulting increase in the market value of the reclaimed land as determined by an independent appraiser.
- (d) A written statement of money expended for the reclamation work, together with a notarized appraisal of an independent appraiser of the market value of the land before and after the reclamation work, shall within six months after completion of the reclamation work, be filed in the office of the county recorder of the county in which the land lies.

Amended by Chapter 219, 1994 General Session

40-10-28.1 Certification of completion of coal reclamation.

- (1) The governor may certify to the secretary of the United States Department of Interior that all of the priorities stated in Subsection 40-10-25(2) for the eligible lands and waters specified in Subsection 40-10-25(3) have been achieved.
- (2)
 - (a) If the secretary concurs with the certification made by the governor, Subsection 40-10-25(3) does not apply for the purpose of determining the eligibility of lands and waters for annual grants, and, except as provided in Subsection (2)(b), eligible lands, waters, and facilities are those:
 - (i) which were mined or processed for minerals or which were affected by mineral mining or processing;
 - (ii) abandoned or left in an inadequate reclamation status prior to August 3, 1977; and
 - (iii) for which there is no continuing reclamation responsibility under state or other federal laws.
 - (b) In determining the eligibility of federal lands, water, and facilities under the jurisdiction of the Forest Service or Bureau of Land Management, in lieu of the August 3, 1977, date referred to in Subsection (2)(a), the applicable dates shall be August 28, 1974, and November 26, 1980, respectively.
- (3) Expenditures of money for lands, waters, and facilities referred to in Subsection (2) shall reflect the following objectives and priorities in the order stated, instead of the priorities set forth in Subsection 40-10-25(2):
 - (a) the protection of public health, safety, general welfare, and property from extreme danger of adverse effects of mineral mining and processing practices;
 - (b) the protection of public health, safety, and general welfare from adverse effects of mineral mining and processing practices; and
 - (c) the restoration of land and water resources and the environment previously degraded by the adverse effects of mineral mining and processing practices.
- (4) Sites and areas designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978, 42 U.S.C. 7901 et seq., or which have been listed for remedial action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. 9601 et seq., are not eligible for expenditures from the fund under this section.
- (5) The following projects may be undertaken if they relate to the priorities stated in Subsection (3):
 - (a) reclamation projects involving the protection, repair, replacement, construction, or enhancement of utilities, such as those relating to water supply or roads, or other facilities serving the public that are adversely affected by mineral mining and processing practices; or
 - (b) the construction of public facilities in communities impacted by coal or other mineral mining and processing practices.
- (6) Notwithstanding Subsection (5), if the secretary concurs in the certification referenced in Subsection (1) and if the governor determines there is a need for activities or construction of

specific public facilities related to the coal or minerals industry in an area impacted by coal or minerals development and the secretary concurs in this need, then the division may use annual grants made available under Subsection 40-10-25(1) to carry out these activities or construction.

- (7) Sections 40-10-27 and 40-10-28, which govern the reclamation of abandoned coal mines, shall also apply to the reclamation of abandoned mineral operations.

Amended by Chapter 151, 1993 General Session

40-10-29 Other enforcement and protection rights unaffected -- Operator to replace adversely affected water supply of legitimate users.

- (1) Nothing in this chapter shall be construed as affecting in any way the right of any person to enforce or protect, under applicable law, his interest in water resources affected by a surface coal mining operation.
- (2) The operator of a surface coal mine shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where this supply has been affected by contamination, diminution, or interruption proximately resulting from the surface coal mine operation.

Enacted by Chapter 145, 1979 General Session

40-10-30 Judicial review of rules or orders.

- (1) Judicial review of adjudicative proceedings under this chapter is governed by Title 63G, Chapter 4, Administrative Procedures Act, and provisions of this chapter consistent with the Administrative Procedures Act.
- (2) Judicial review of the board's rulemaking procedures and rules adopted under this chapter is governed by Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (3) An appeal from an order of the board shall be directly to the Utah Supreme Court and is not a trial de novo. The court shall set aside the board action if it is found to be:
- (a) unreasonable, unjust, arbitrary, capricious, or an abuse of discretion;
 - (b) contrary to constitutional right, power, privilege, or immunity;
 - (c) in excess of statutory jurisdiction, authority, or limitations;
 - (d) not in compliance with procedure required by law;
 - (e) based upon a clearly erroneous interpretation or application of the law; or
 - (f) as to an adjudicative proceeding, unsupported by substantial evidence on the record.
- (4) An action or appeal involving an order of the board shall be determined as expeditiously as feasible and in accordance with Section 78A-3-102. The Utah Supreme Court shall determine the issues on both questions of law and fact and shall affirm or set aside the rule or order, enjoin or stay the effective date of agency action, or remand the cause to the board for further proceedings. Judicial review of disputed issues of fact shall be confined to the agency record. The court may, in its discretion, receive additional evidence for good cause shown.
- (5) If the board fails to perform any act or duty under this chapter which is not discretionary, the aggrieved person may bring an action in the district court of the county in which the operation or proposed operation is located.

Amended by Chapter 3, 2008 General Session

Amended by Chapter 382, 2008 General Session

